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

DECISION ON THE MERITS

Adoption: 5 December 2019

Notification: 28 February 2020

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University Women of Europe (UWE) 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 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 11 and 12 September, 16 and 17 October, 2,3 and 5 December 2019,

On the basis of the report presented by Kristine DUPATE,

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 Croatia is in violation of Articles 1 and 4§3 of the European Social Charter ("the 1961 Charter") as well as Article 1 of the 1988 Additional Protocol to the 1961 Charter ("the 1988 Additional Protocol") in light of the non-discrimination clause of the Preamble to the 1961 Charter having regard to the pay gap between men and women and the under-representation of women in decision-making positions within private companies in Croatia.
3. On 4 July 2017, referring to Article 6 of the 1995 Additional 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 of Croatia ("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 Charter to make observations by 13 October 2017.
7. On 14 September 2017, the European Confederation of Trade Unions (ETUC) ("the 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 6 October 2017, the Government asked for an extension of 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 3 April 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 alleges that the situation in Croatia constitutes a violation of Articles 1 and 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol on the following grounds:

- Firstly, UWE alleges that a gender pay gap between women and men still persists to the detriment of the former. UWE maintains that Croatia has not achieved equal pay for equal work or work of equal value and has not ensured the respect for the principle in practice.
- Secondly, UWE alleges that women are still under-represented in decision-making positions in private companies.

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

B – The respondent Government

15. The Government asks the Committee to dismiss UWE's allegations in their entirety, as they are not substantiated, and because the wording of the complaint is too general and fails to provide specific information regarding Croatia.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics on the principles of equality between men and women, concludes that it appears that the minimum 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, in the sectors of undocumented work or the informal economy, the gender pay gap is probably even higher).

17. The ETUC refers to data of the European Institute for Gender Equality (EIGE), with regard to the representation of women in decision-making positions in 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 concerned 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 sufficiently enforce it. 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 1 of the 1988 Additional Protocol 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 of combatting the pay gap between women and men 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 in companies, as a consequence of the decision of admissibility of the Committee, it follows that this aspect falls within the scope of Article 1.d of the 1988 Additional Protocol.

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 nevertheless considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. As regards Croatia, the ETUC maintains that as regards substantive dimension, statistical evidence shows that there is still an underrepresentation of women in decision-making bodies within private companies. There is a lack of 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. From the point of view of the ETUC this illustrates that there is a violation of Article 1 of the 1988 Additional Protocol from the substantive perspective.

24. Concerning the under-representation in decision-making positions within private companies, according to ETUC this problem has only been addressed in more recent years. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 1 of the 1988 Additional Protocol.

25. As regards procedural perspective, 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.

26. From the point of view of the ETUC this illustrates that there is a violation of Article 1 of the 1988 Additional Protocol also from the procedural perspective.

OTHER OBSERVATIONS

A – The European Union

27. In its observations regarding University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden (Complaints Nos. 124-138/2016), 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.

28. 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).

29. 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.

30. 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

31. Moreover, several other Commission actions relate directly to some of the elements of the complaints, such as 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, the 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.

32. 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.

33. 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 aspects into account.

B – European Network of Equality Bodies (EQUINET)

34. EQUINET has submitted observations through the Gender Equality Ombudsperson of Croatia.

35. Concerning the gender pay gap in Croatia, according to the latest statistical data, the Ombudsperson states that women earn 88.7% of the average salary of men. The Ombudsperson has noticed a worrying increase in the gender pay gap in Croatia in the last several years in both in the public and private sectors. Women's salaries are significantly lower (more than 20 percentage points) in two areas of activity: "finance and insurance" and "health care and social care". In the public sector, the registered pay gap is even higher than in the private sector, according to Eurostat data. During the period between the years 2012 and 2014, the gender pay gap in the public sector increased from 9.3% to 16.4%, while in the private sector it increased from 3.7% to 11.2%.

36. Concerning remedies and access to justice, the Ombudsperson states that the underreporting of pay discrimination represents a serious problem in Croatia.

Institutions receive very few complaints on this ground and most of them relating either to the alleged discriminatory system of incentive severance pay or pensions. The Ombudsperson assumes that the most likely reason for this is the lack of awareness of legal rights (equal pay for equal work or work of equal value) and the available legal remedies. Case law in this area is almost non-existent in Croatia.

37. Furthermore, the Ombudsperson states that the most serious problems are the lack of transparency of wage policies, as well as indistinct job classifications and vague descriptions of obligations and tasks associated to the post. There is a lack of assessment criteria for determining work of equal value, given that there has not been a significant number of cases in front of the courts where such criteria could be established. The Ombudsperson furthermore confirms the lack of case law on job evaluation systems. In some other types of court cases, which were based on civil action to determine sex discrimination, judges were not aware of the principle of shifting the burden of proof and there is a need for continuous education of judges in this field.

38. The Ombudsperson provided information concerning a recent complaint, in which the complainant alleges that the Croatian legal system discriminates against women, as it uses maternity benefits (which are in most cases lower than their salary) as the basis for calculating their pension. Investigating this case, the Ombudsperson finds that women are not only paid less when doing their paid work, but also when they are performing unpaid work (caring for children and the elderly when it is not possible to keep their job). In this case, the Ombudsperson recommended to the Ministry of Demographics, Family, Youth and Social Policy and the Ministry of Labour and Pension System to form an Interdepartmental working group which would discuss the issue of the gender gap in pensions. At the same time, pursuant to the *Report on the need for an EU strategy to end and prevent the gender pension gap (2016/2061(INI))* of 12 May 2017 of the Committee on Women's Rights and Gender Equality of the European Parliament, the Ombudsperson recommends the possibility of introducing a mechanism to correct inequalities which could lead to differences in pensions of men and women, especially the introduction of a system of "points for care", as well as the "system of pension credit points".

RELEVANT DOMESTIC LAW

39. The parties to this complaint rely on the following texts:

A – The Constitution of the Republic of Croatia

40. Pursuant to Article 14 of the Constitution of the Republic of Croatia all persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of their race,

colour, gender, language, religion, political or other affiliation, national or social origin, property, birth, education, social status or other characteristics.

B – The Labour Act

41. The Labour Act is a general regulation governing employment relationship in the Republic of Croatia. Article 3 of the Labour Act explicitly specifies that gender neutral language shall be used therein and shall apply equally to both men and women.

42. Article 7 of the Labour Act sets out fundamental obligations and rights arising from employment relationship whereby the employer must respect the rights and dignity of the workers when determining the place and the manner of performing work.

43. Pursuant to Article 26§1 of the Labour Act, the employer who employs a minimum of twenty workers shall be obliged to adopt and make publicly available the working regulations governing, *inter alia*, procedures and measures for protecting worker dignity as well as anti-discrimination measures. During an inspection concerning labour-related matters, an inspector shall, by means of an oral decision noted in the inspection report, order the employer to adopt and make publicly available working regulations, within a specified time limit, or to regulate all the issues that must be regulated by working regulations. Consequently, where an inspector determines during an inspection that the employer has failed to ensure measures regulating the protection of workers' dignity, the inspector shall by means of an oral decision order the employer to adopt such measures. When adopting working regulations, the employer must consult the works council.

44. Equal pay for women and men is prescribed by the provision referred to in Article 91 of the Labour Act:

Equal pay for women and men

Article 91

“(1) The employer shall be obliged to pay equal remuneration to female and male workers for the same work or for work to which equal value is attributed.

(2) For the purposes of paragraph 1 of this Article, two persons of different sex perform the same work or work to which equal value is attributed if:

1) they perform the same work under the same or similar conditions or if they could substitute one another at the workplace

2) the work one of them performs is of a similar nature to that performed by another, and the differences between the work performed by them and conditions under which it is performed have no significance in relation to the overall nature of the work or they appear so rarely that they have no significance in relation to the overall nature of the work

3) the work one of them performs is of equal value as that performed by another, taking into account criteria such as qualifications, skills, responsibilities and conditions under which the work is performed and whether the work is of manual nature or not.

(3) Within the meaning of paragraph 1 of this Article, remuneration shall mean a basic or minimum salary plus any additional charges of any kind paid by the employer to the female or male worker for the work performed, either directly or indirectly, in cash or in kind, under an employment contract, collective agreement, working regulations or any other laws and regulations.

(4) Any provision in an employment contract, a collective agreement, working regulations or any other legal act contrary to paragraph 1 of this Article shall be null and void.”

C – The Anti-Discrimination Act

45. This Act prohibits discrimination on 18 grounds including gender. It shall apply to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority. It shall apply also to the conduct of all legal and natural persons, especially in the following areas:

1. work and working conditions; access to self-employment and occupation, including Selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining;
2. education, science and sports;
3. social security, including social welfare, pension and health insurance and unemployment insurance;
4. health protection;
5. judiciary and administration;
6. housing;
7. public informing and media,
8. access to goods and services and their providing,
9. membership and activities in trade unions, civil society organisations, political parties or any other organisations;
10. access to participation in the cultural and artistic creation.

46. The Anti-Discrimination Act prescribes the main features of the special legal action for protection against discrimination (Article 17(1) Anti-Discrimination Act): an action for the determination of discrimination, an action for the prohibition or elimination of discrimination, an action for damages and a request to publish in the media the ruling establishing a violation of the right to equal treatment, at the respondent’s costs.

47. The Anti-Discrimination Act and the Gender Equality Act provides for the shifting of the burden of proof in discrimination cases.

D – The Gender Equality Act

48. The Gender Equality Act lays down a general framework for the protection and promotion of gender equality. The Act also defines and regulates the method of protection from discrimination and creation of equal opportunities for women and men. Pursuant to Article 2 no one shall suffer adverse effects because of their involvement in discrimination-related procedure.

49. Article 3 stipulates that public bodies, units of local and regional self-government, legal persons with public authorities and legal persons that are majority-owned by the state should, in all stages of planning and implementing legal acts, and decisions, assess the impact of such acts, decisions or actions on the position of women, or men, with a view to achieving true gender equality.

50. Article 4 states that this Act may not be interpreted or implemented so as to restrict or diminish the purpose of warranties on gender equality enshrined in the:

1. universal rules of international law,
2. *acquis communautaire* of the European Union,
3. United Nations Convention on the Elimination of All Forms of Discrimination against Women,
4. United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and
5. European Convention for the Protection of Human Rights and Fundamental Freedoms.

51. Article 9 provides for the introduction of specific measures on a temporary basis with a view to achieving genuine equality between women and men.

52. Article 13 prohibits discrimination in the field of employment and occupation:

Article 13

“(1) There shall be no discrimination in the field of employment and occupation in the public or private sector, including public bodies, in relation to:

1. conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy,
2. promotion,
3. access to all types and to all levels of education, professional guidance, vocational training, advanced vocational training and retraining,
4. employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value,
5. membership of, and involvement in, organisations of workers or employers, or any professional organisation, including the benefits provided for by such organisations,
6. balance between a professional and private life,
7. pregnancy, giving birth, parenting and any form of custody.

(2) When advertising vacancies, job advertisements shall include a clear indication that persons of both sexes may apply for the job in question.

(3) Where a special law requires an invitation to submit applications to be published, the invitation shall include a clear indication that persons of both sexes may apply for the job in question.

(4) An invitation to submit applications is not required to include an indication that persons of both sexes may apply for the job only in relation to a specific job where the nature of the occupational activities concerned is such that characteristics related to any of the grounds referred to in Article 6 of this Act constitute a genuine and determining occupational requirement, provided that the objective is legitimate.

(5) No expressions shall be used in job advertisements that cause or might cause discrimination on the grounds of sex, marital or family status and sexual orientation.

(6) Where decisions on job assignments or other decisions on the rights and obligations of civil servants are adopted, the title of a post shall be used in the masculine and feminine gender.”

53. Article 17 of the Gender Equality Act stipulates that any statistical data and personal information collected shall use gender-specific terminology. Such statistical data and information collected, shall be accessible to the public.

E – The Companies Act

54. The elements in the Companies Act, relevant for this complaint, concern the system of corporate governance in Croatia. There is a monistic and dualistic system of corporate governance. In the dual board, two-tier system, the management board is responsible for managing and representing the company, and the Supervisory Board appoints board members. In a single board, one-tier system, this function is performed by executive directors appointed at the general meeting.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

55. In its Recommendation Rec(1985)2 on legal protection against sex discrimination, the Committee of Ministers 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.

56. 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)

57. 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.

58. 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.

59. 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.

60. 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)

61. 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.”

62. 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

63. 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.”

64. 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.

65. 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

66. 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

67. 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)13; 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

68. 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)

69. 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:

70. 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

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

72. 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.”

73. 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. [...]”

74. 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

75. 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.”

76. 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).

77. 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.

78. 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

79. 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.

80. 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.”

81. 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

a) European Commission

82. See 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

83. 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.

84. 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 Jenkins, paragraph 22); C-237/85 Rummler, paragraph 11; C-17/05 Cadman, paragraphs 27-29).

85. 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 C-96/80 Jenkins, paragraphs 14 and 15; C-285/02 Elsner-Lakeberg, paragraph 12; C-17/05 Cadman, paragraph 30).

86. 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 Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93 Royal Copenhagen) or pay provided on a voluntary basis (C-457/93 Lewark). 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 (C-320/00 Lawrence, paragraph 18; C-256/01 Allonby).

87. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, C-262/88 Barber, paragraph 12; C-170/84 Bilka-Kaufhaus, C-167/97 Seymour-Smith, C-12/81 Garland, C-381/99 Brunnhofer, 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 (C-324/93 Gillespie, C-360/90 Botel, 171/88 Rinner-Kuhn). The concept of pay does not include statutory social security benefits (C-80/70 Defrenne).

88. 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 C-129/79 Macarthys Ltd, paragraph 11, and C-237/85 Rummler, paragraphs 13 and 23, C-381/99 Brunnhofer, 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, paragraphs 32 and 33).

89. 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, paragraph 13).

90. 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).

91. 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, paragraph 22, and C-460/06 Paquay, 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, C-14/83 von Colson and Kamann, paragraphs 23 and 24, C-180/95 Draehmpaehl, paragraph 25; and C-460/06 Paquay, paragraph 45).

92. 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, paragraph 53).

93. 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, paragraph 26, C-460/06 Paquay, paragraph 46 and C-407/14 Camacho, paragraph 33).

94. 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 (C-326/97 Levez). 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, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

95. 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.

96. 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)).

97. Article 1c of the 1988 Additional Protocol (and Article 20 of the Revised Charter) 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 of the 1961 Charter, 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.

98. All the States Parties to the Charter having accepted Article 1 of the 1988 Additional Protocol 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).

99. The Committee notes that UWE invokes both Articles 1 and 4§3 of the 1961 Charter, but it also notes that Croatia has not accepted to be bound by Article 4§3. However, it considers that in accordance with its well-established case law, the assessment in substance is more appropriate under Article 1 of the 1988 Additional Protocol by which Croatia is bound.

100. 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.

101. 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).

102. 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).

103. 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 laid down in Article 1 of the 1988 Additional Protocol in the light of the current state of international and European law and practice in the area.

104. 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.

105. 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 Article 1.c of the 1988 Additional Protocol. 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 1.c of the 1988 Additional Protocol. 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 1.d of the 1988 Additional Protocol, 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 ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

106. Article 1.c of the 1988 Additional Protocol read as follows:

Article 1 of the 1988 Additional Protocol – 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

107. UWE alleges that regulations in Croatia are outdated and ineffective and that the language used in legislation and regulations is all in masculine form, not gender neutral. It is precisely the effectiveness of the European Social Charter and the related texts that is at stake here because this situation deprives the population, particularly women, of equal pay for equal or similar work and saddles them with the numerous consequences that this entails.

108. In 2011, a new law on the national gender equality policy was introduced, covering the period from 2011 to 2015. The Labour Act, adopted in 2014, prohibits direct and indirect discrimination and contains a provision requiring equal pay for women and men performing work of equal value. Employers with 20 employees or more are required to draw up a document setting out the measures to be taken to protect persons against discrimination. During the eight-year EU accession process, Croatia initiated a large number of reforms, including the adoption of a policy to improve the position of women. Equality is being enshrined in law in all areas. The laws adopted are a key means of promoting gender equality in Croatia. The laws refer to gender equality and stipulate that at all stages of planning, adoption and implementation of legal acts, decisions and practical measures, their impact on gender should be assessed with the aim of achieving true equality between women and men. UWE states that although numerous strategies have been adopted in this connection, none specifically address the issue of equal pay and there does not appear to be any legislation on equal pay for women and men for equal, similar or comparable work.

Effective remedies

109. UWE alleges that victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. The chances of success are very low. In 2014, 22 civil anti-discrimination cases were closed and discrimination was not found in any of them. Proceedings before the Croatian courts rarely satisfy the standards of fairness in respect of reasonable time. The proceedings usually last so long that remedies cannot be considered effective. For example, although the law clearly states that employment disputes should be decided in the first instance within six months, as a rule court proceedings in bigger cities last several years. Many experts report that very few, if any, complaints about gender-based pay discrimination reach the responsible (ordinary or administrative) courts.

110. UWE further states that female workers who bring a complaint runs a considerable risk of being dismissed quite rapidly, albeit of course on another pretext. This is not to mention the cost of such proceedings, the energy they require and the pressure they place women under. There are so many difficulties that a reasonable lawyer will not drag a woman employee into such proceedings unless her contract has already been, or is in the process of being, terminated. Embarking on such proceedings is an extremely hazardous process, producing a very uncertain result.

111. UWE cites the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on Gender Equality: Croatia 2017, which states the following: “The Ombudsperson’s report for 2016 and its analysis of cases before the courts show – just as the previous report did – that anti-discrimination protection does not work in practice. In 2016, 200 anti-discrimination civil proceedings (including labour disputes) were pending before Croatian courts. In the same period only one judgment was found in favour of a victim of discrimination.

112. UWE considers that sanctions in misdemeanour cases imposed by courts are neither effective, nor proportionate or dissuasive. Judges, as a rule, mitigate sentences set up by law so the usual sentence is between EUR 40 and 400. The severity of the offence, circumstances and consequences are often ignored. Sanctions are mitigated even when the act of discrimination is done publicly (e.g. through a social network or at a public meeting), when there are more victims and when the victim is especially vulnerable. Victims of discrimination are reluctant to use anti-discrimination remedies for several reasons. Persons receiving unequal pay must provide evidence to prove that to be the case, as there is no system for reversal of the burden of proof, and the chances of success are very low.

113. UWE further alleges that a number of questions are raised both by the lack of published case law and by the Supreme Court’s interpretation of the Anti-Discrimination Act. Claimants face difficulties in proving discrimination since the rule on the shifting of the burden of proof is not always correctly applied in practice. Case law of municipal and county courts, the main source of judicial interpretation of often very wide legal provisions, is not published and therefore unavailable to potential claimants. The case law is still not clear regarding the issue of intent as an element of discrimination and judges are reluctant to find discrimination if the alleged discriminator did not show any intent to violate a victim’s right. In spite, of the provision of the Anti-Discrimination Act that appeal on points of law (*revizija*) is always admissible in anti-discrimination cases, most of the Supreme Court’s decisions in discrimination cases are decisions to dismiss appeal on points of law as inadmissible. The reasons are that they did not fulfil the criteria for extraordinary appeal on points of law (*izvanredna revizija*), and the remedy being admissible rarely and only in exceptional situations., According to the Supreme Court, the only appeal to the Supreme Court admissible in anti-discrimination cases is when the value of the case is above the statutory threshold for lodging an appeal on points of law. In 2016, 44 civil anti-discrimination cases were closed and discrimination was found in only one of them.

Pay transparency and job comparisons

114. UWE states that there is no indication of the number of non-neutral job classification systems. The Government has referred to the fact that the negotiation of classifications is encouraged, but there is no requirement to establish them. Croatia provides no information about the component elements or characteristics of this instrument, or about the pay gap calculation method for firms. It is therefore impossible to assess the latter's relevance with regard to small and medium enterprises which can exonerate themselves, escaping the legislation that applies to larger companies. Moreover, classifications are rarely free from gender bias. For instance, the workers of a municipal parks department, who are all male, are paid a bonus, but not the employees of a municipal welfare centre's kindergartens and nurseries, who are all female. The same approach could apply in a large private company. An employer of good will who was aware of the harmful effects of gender bias in classifications would be in a better position to weigh up the physical or mental strain experienced by his or her employees in a balanced way. Nobody would be entitled to a bonus or everybody would have one. Furthermore, UWE highlights the lack of occupational categories with clearly defined classification criteria.

Equality bodies and other institutions

115. UWE states that, as in many other countries, there is an Ombudsperson in Croatia. However, in practice, according to a report on non-discrimination by the European Network of Legal Experts in Gender Equality and Non-Discrimination on Croatia in 2015, as in some other countries, the system is not very effective. The Ombudsperson is assisted by a gender equality ombudsperson.

116. UWE further alleges that the protection against discrimination is not effective. The Ombudsperson is tasked with overseeing enforcement of constitutional rights, not specifically gender equality. The Gender Equality Ombudsperson has the same powers as the People's Ombudsperson. Even though the Government states that the Ombudsperson for Gender Equality had determined discrimination in 209 cases and 13 cases were reported to the competent State Attorney's Office in connection with criminal offences there is no information on the 196 non-criminal cases.

117. UWE refers to the CEDAW's analysis of Croatia, which shows that the Office for Gender Equality has a staff of six and its budget has decreased substantially. The funding for the Office of the Ombudsperson for Gender Equality was also reduced. Specific reference was made to this report in the collective complaint: the policy in Croatia is described and it is shown that there is neither effective nor practical equality and that the protection provided against discrimination is inadequate.

118. The Ministry of Labour and the Pension System is the main administrative body for safety at work and health protection in the Republic of Croatia and the Labour Inspectorate depends of it. However, UWE alleges that equal pay for men and women is not their main focus. With regard to representation in the workplace, (which) is supposed to be performed both by trade unions and by works councils, the latter are very few in number and the defence of workers' rights is largely left to trade unions. That is why there are so many trade unions which are easy to set up.

2. The respondent Government

Recognition of the right to equal pay in legislation

119. The Government states that Croatia has adopted a detailed and comprehensive legal framework to regulate gender equality, prevent discrimination and protect rights arising from the employment relationship. Article 4 of the Gender Equality Act explicitly states that the Act is not to be interpreted or implemented so as to restrict or diminish the purpose of warranties on gender equality enshrined in the universal rules of international law, the acquis of the European Union, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The language used is neutral and UWE does not refer to any specific examples that may show any gap or deficiency in the existing legal framework.

Effective remedies

120. The Government maintains that, in 2016, there has been a 15% increase in the number of recorded cases compared to the previous years, although it is not specified whether these figures concern complaints before courts or also those introduced to the Ombudsperson. Out of the total number of 4,031 cases, 387 pertained to various instances of discrimination. Most grievances were related to discrimination in employment relations (labour and employment). Men filed 55.3% of the grievances, while women filed 44.7%. One grievance had been filed by a transgender person and three grievances were submitted anonymously. Gender-based discrimination accounts for ten grievances (2.6%) in the distribution of causes.

Pay transparency and job comparison

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

Equality bodies and other institutions

122. The Government states that there is a comprehensive system of equality bodies in Croatia. Pursuant to the provisions of the Gender Equality Act, the institutional framework for gender equality consists of:

1. The Ombudsperson for Gender Equality
2. Office for Gender Equality
3. Gender Equality Committee of the Croatian parliament
4. Coordinators in the state administration bodies
5. Coordinators in the state administration offices
6. County/Local Gender Equality Commissions

123. The first Ombudsperson for Gender Equality was appointed in 2003, at the proposal of the Government. The Croatian Parliament passed the new Gender Equality Act in 2008, stipulating that the Ombudsperson acts in an independent manner to eliminate and prevent gender-based discrimination.

124. The scope of competences of the Ombudsperson for Gender Equality includes:

- receiving complaints from natural persons or legal entities pertaining to gender-based discrimination;
- providing assistance to natural and legal persons who lodged a complaint of discrimination on grounds of sex when instituting legal proceedings;
- conducting inquiries on basis of individual complaints prior to initiating legal proceedings;
- conducting, with the consent of the parties involved, a mediation process with a possibility of reaching an out-of court settlement;
- collecting and analysing statistical data on cases of gender-based discrimination;
- conducting independent surveys pertaining to discrimination, publishing independent reports and exchanging available information with corresponding European bodies.

125. The Government further highlights that the Ombudsperson for Gender Equality acts independently, monitors the implementation of the Gender Equality Act and other legislation pertaining to gender equality and reports to the Croatian Parliament at least once a year. The Ombudsperson conducts inquiries into violations of gender equality principles, discrimination against individuals or groups of individuals resulting from the actions of public bodies, local and regional (county) self-government or other legal entities with public authority. Each individual has the right to address the Ombudsperson for Gender Equality in any instance of violations of the Gender Equality Act, whether they have suffered such infringements directly or on behalf of third parties, with the consent of the harmed party. As per the Annual Report for 2016, 2,757 cases had been processed, which represents an increase of 11.7% when compared to 2015. The complaints mostly pertain to gender-based discrimination in the areas of labour, employment relations and social security. The Ombudsperson found discrimination in 209 cases; 13 cases were reported to the competent State Attorney's Office in connection with criminal offenses and one case in connection with a misdemeanour act. It further acted as an intervener in three court proceedings. The Ombudsperson

carried out three independent research projects: two related to the field of labour, working conditions and social security, and one in the field of education and science. Additionally, 14 analyses were completed, five publications produced and two memoranda of cooperation were concluded.

126. The Office for Gender Equality was established on 3 February 2004 as a professional body for the implementation of technical and administrative activities related to the enforcement of gender equality in Croatia. The Office is headed by a Director. The scope of work of the Office is dedicated to realising a society without gender-based discrimination, where both men and women equally participate in all spheres of public and private lives, have equal status and equal opportunities to exercise their rights and obtain equal benefits from their results. The Office for Gender Equality submits reports to the Government every two years on the implementation of the National Policy for Gender Equality, which is a fundamental strategic policy document that has been passed with the purpose of eliminating discrimination against women and establishing true gender equality by implementing equal opportunities policy.

127. The Gender Equality Committee of the Croatian Parliament establishes and monitors the implementation of policies. In legislative procedures to enact laws and other regulations it carries the rights and duties of a competent working body in matters pertaining to promoting and monitoring the implementation of the gender equality principles in the legislation.

128. In line with the Gender Equality Act, directors of public administration bodies appoint an official or a civil servant in a managing position to carry out the duties and tasks of Gender Equality Coordinator. The Coordinator pursuant to the scope of activities of the public administration body coordinates the implementation of the Gender Equality Act and the National Policy for Gender Equality and cooperates with the Office for Gender Equality. The Coordinator prepares reports on the implementation of the National Policy for Gender Equality that is submitted by public administration bodies to the Office every two years. The rights, obligations and the method of work of the Coordinator are stipulated in an action plan for the promotion and establishment of gender equality referred to in Article 11 of the Gender Equality Act. Bodies of local and regional self-government and the City of Zagreb also establish and, pursuant to the proposed programme of activities, provide the conditions and funding for the activities of County Gender Equality Commissions and the City of Zagreb Gender Equality Commission. The activities aim to promote gender equality at a local level and implementing the Gender Equality Act and the National Policy for Gender Equality. The Commissions serve as working and consultative bodies of County assemblies and the City of Zagreb Assembly. Their membership is comprised of the elected members of the County assemblies, and the City of Zagreb Assembly, coordinators from the offices of the public administration bodies, representatives of non-governmental organisations and independent experts.

129. The Labour Inspectorate does not serve as an institutional mechanism for gender equality policies within the existing legislative framework. However, the Government states that it does play an important role in achieving gender equality. In 2016 the Labour Inspectors had carried out a total of 43,872 activities; 15,570 pertained to inspections, while 28,302 activities were related to direct activities in addressing issues, supervisions and certification. In the area of employment relations, 2,365 indictments against employers had been filed with misdemeanours courts in cases of reasonable doubts on charges of violations of regulations and a total of 131 mandatory misdemeanour warrants and 227 misdemeanour warrants were issued. Five grievances were filed in connection to the violation of the dignity of workers, of which two pertained to women. Nine grievances pertained to discrimination (filed by five men and four women).

130. The Ombudsperson is a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms and the National Preventive Mechanism for the protection of the persons deprived of their liberty. The Ombudsperson acts independently and autonomously. The Ombudsperson and their deputies are appointed by the Croatian Parliament for an eight-year term. The Ombudsperson submits an Annual Report on the state of the human rights and instances of discrimination. These reports represent a vital mechanism of the institution which has been an integral part of the human rights protection system in Croatia over the last 25 years.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

131. The Committee recalls that under 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.

132. 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.

133. 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.

134. 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).

135. The Committee notes that in Croatia, there is a comprehensive legal framework that regulates the principle of equal pay. This framework has been developed mainly since 2008 and include several acts, such as the Gender Equality Act and several reforms of the Labour Act to include equal pay in all fields. The Anti-Discrimination Act applies to all areas without limitation while explicitly enumerating 10 areas to which special attention is to be paid. The Committee notes that the legislation explicitly refers to the principle of equal pay and applies to the public and the private sectors, self-employment and occupation, including contract work, military service and holding of statutory office, in respect of the five grounds of unlawful discrimination.

136. The Committee therefore considers that the obligation to recognise the right to equal pay in the legislation is satisfied.

Effective remedies

137. 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.

138. 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.

139. 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).

140. 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.

141. The Committee notes that according to UWE few gender discrimination cases are lodged in Croatia and there is limited information about the outcome of such cases. The Committee further notes the Gender Equality Ombudsperson's statement that underreporting of pay discrimination represents a serious problem in Croatia and that very few complaints are brought on this ground. The most likely reason for this according to the Gender Equality Ombudsperson is lack of awareness of the right to equal pay for equal work or work of equal value and the available legal remedies. There is no information on statistics reflecting the number of equal pay cases in recent years. The lack of statistical information on equal pay cases is also referred to in Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the Equal Remuneration Convention (No. 100) in respect of Croatia (2017).

142. The European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Croatia 2018 highlights as the crucial reason for this situation the fact that decisions are not published and that databases on case law are not updated regularly, and they are thus difficult to access. Media attention is reserved for high-profile cases and is not always accurate. The above-mentioned Report further states that analysis of the case law of lower courts is quite difficult because of the complexity of accessing it. The published case law (judgments of the Supreme Court, judgments of the Constitutional Court, selected judgments of the county courts) is classified in a non-transparent manner and case law search engines are far from being user friendly, which could also be an almost insurmountable obstacle for discrimination victims. The European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Croatia 2019 further states that the scarcity of case law makes it difficult to assess compliance in practice with the existing legislative framework in the field of equal pay. The Report states that an analysis of all case law on discrimination (covering all grounds) shows that the efficiency of court proceedings is very low, as the majority of court proceedings on discrimination take longer than 12 months. The Report also states that victims of discrimination are highly exposed to further victimisation during court proceedings. The above-mentioned 2019 Country Report sums up the possible barriers to litigation, including in respect of gender pay discrimination: lengthy proceedings; difficulties in proving discrimination; lack of access to existing case law; and high costs.

143. The Committee recalls that Article 20 of the 2008 Anti-Discrimination Act provides for a shift of the burden of proof from the complainant to the respondent. The Gender Equality Ombudsperson states in its observations that the shift of the burden of proof is not adequately implemented by courts, given that clear criteria have not been established by case law, which is very limited. In the few cases known to the Ombudsperson, the principle of shifting the burden of proof was not applied for pay discrimination victims.

144. As regards retaliatory dismissals, the Committee observes that there is no specific information on this issue either on the submissions of the Government or in terms of the information received in the framework of the Committee's reporting procedure.

145. In view of the above and the lack of information on the number of relevant cases on gender pay discrimination, the complexities in accessing the contents of case-law, the existing obstacles to accessing judicial proceedings, as well as the lack of a shift of the burden of proof in practice in pay discrimination cases, the Committee considers that the obligation to ensure access to effective remedies in case of pay discrimination is not satisfied.

Pay transparency and job comparisons

146. 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.

147. 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.

148. 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).

149. 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.

150. 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.

151. The Committee observes that in Croatia there are no domestic legislative acts or proposals to specifically address pay transparency in either the public or private sectors and no case-law on this issue. The Committee acknowledges from the above-mentioned Country Report on gender equality 2019 that an initiative was launched in July 2015 with the adoption of the Action Plan in Croatia for the determination and regulation of the salary system 2015-2016, which included the adoption of a new Act on Salaries in the Public Sector. However, this initiative came to an end in January 2016 and there has been no further legislative activity on pay transparency.

152. The Committee also observes from the above-mentioned Country Report on gender equality 2019 that Croatia 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.

153. The Committee recalls that the Gender Equality Ombudsperson of Croatia is of the view that one of the most important problems in the country is the lack of pay transparency as well as the vague classification of jobs. The lack of assessment criteria for establishing work of equal value has had a clear impact on the limited number of cases brought before the courts.

154. The Government has not provided any information on this issue, but the Committee notes that the legislation explicitly refers to the principle of equal pay and provides definitions of equal work and work of equal value. Article 90 of the Labour Act regulates the determination of wages. The employer is obliged to pay the wage stipulated by regulations, a collective agreement, employment rules or an employment contract. If the basis and parameters for the determination of wages are not stipulated

in a collective agreement, any employer employing more than 20 workers shall stipulate them in employment rules. If there is neither a collective agreement nor employment rules on pay determination, and the employment contract does not provide sufficient information to determine the wage, the employer shall pay the worker an “adequate wage”. An adequate wage is a wage usually paid for equal work, and if it cannot be determined, the court will decide thereon in accordance with the given circumstances. Moreover, according to the above-mentioned Country Report on gender equality 2019, the Croatian Bureau of Statistics publishes an annual report ‘Men and Women in Croatia’ (from 2006 onwards), which contains a separate chapter with gender segregated data on employment and earnings. It is easily accessible online on the Bureau’s website and is published in Croatian and English. The Country Report states that although it is a helpful, reliable and informative publication, the published data concerning pay do not offer complete information and that there are difficulties in comparing jobs (and pay) in practice.

155. The Committee notes that a claimant will be required to refer to an actual comparator if he/she is to succeed in an equal pay case. The wording of Article 91 of the Labour Act (on equal pay) provides for actual comparators. The above-mentioned Report further states that a claimant will be required to prove that the respondent should have treated him/her equally in comparison with another person in a comparable situation, but any difference in formal requirements overturns comparability (e.g. where a job classification system exists, any formal difference might exclude comparability).

156. Concerning the possibility of making job comparisons across companies, the Committee observes that no information is provided by the Government. According to the above-mentioned Country Report on gender equality 2019, the comparator should be a person employed by the same employer (currently or in the past), even though, theoretically, where the same collective agreement applies to more than one employer, it can be a worker employed by another employer. However, the case law is scarce concerning this issue and the above-mentioned Country Report states that this is probably due to the difficulties that could arise in finding a suitable comparator and proving differences in pay in practice. The Committee considers that it is not demonstrated that job comparisons across companies are enabled in practice.

157. In the light of the above and mainly because 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; that job classification systems are applied and used in practice to prevent gender pay discrimination; and that job comparisons across companies are possible, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons is not satisfied.

Equality bodies and other institutions

158. 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.

159. 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.

160. 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.

161. 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.

162. The Committee notes that in Croatia the Anti-Discrimination Act grants the Ombudsperson powers as the principal body for the elimination of discrimination and promotion of equal treatment. The Ombudsperson is thus the main anti-discrimination body, except in respect of disability, which falls within the competence of the Disability Ombudsperson, and gender and sexual orientation, which is dealt with by the Gender Equality Ombudsperson. The tasks of the Gender Equality Ombudsperson include: receiving complaints from and providing assistance to natural persons or legal entities in the field of gender discrimination; investigating individual complaints prior to legal proceedings and conducting mediation processes with the consent of the parties;

collecting and analysing statistical data on cases of gender discrimination; conducting independent surveys concerning discrimination; publishing independent reports; and exchanging available information with corresponding European bodies.

163. The Committee further notes that Article 10(1) of the Anti-Discrimination Act provides for reporting obligations of state bodies to the Gender Equality Ombudsperson concerning reasonably suspected cases of discrimination. The Labour Act also implies that the Labour Inspectorate may have competence for cases of discrimination through filing motions to indict before the courts under Article 125 of the Labour Act, which provides for employers' obligations to adopt employment rules concerning protection of workers' dignity.

164. The Committee notes that there have been developments regarding the equality bodies and an elaborate institutional framework has been adopted. The Ombudsperson and the specialised Ombudspersons, particularly the one in the field of Gender Equality, have a broad mandate and functions to deal with discrimination cases. According to the above-mentioned Country Report on gender equality 2019, the workload of the Gender Equality Ombudsperson has increased and it issues numerous recommendations and warnings ex officio. Its work has been strengthened as a result of the successive legislative reforms adopted, and although sometimes the functions may overlap, the different Ombudspersons are able to fulfil their tasks.

165. The Committee further observes that the budget of the Gender Equality Ombudsperson has not suffered significant cutbacks and has even increased slightly in recent years according to EQUINET.

166. The Committee therefore considers that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is satisfied.

Concluding assessment

167. Firstly, as regards the recognition of the right to equal pay in law, the Committee observes that the principle of equal pay for equal work or work of equal value is recognised in domestic legislation. The Committee considers that the legislation satisfies the obligation laid down by the 1988 Additional Protocol to recognise the right to equal pay.

168. Secondly, the Committee considers that, on the basis of the existing obstacles to accessing judicial proceedings (such as the costs and the difficulties to access the necessary case law), together with the difficulties to obtain information regarding pay, and the fact that it has not been demonstrated that a shift in the burden of proof is ensured, the obligation to ensure access to effective remedies is not satisfied.

169. Thirdly, the Committee notes that the principle of pay transparency does not appear in the legislation and that there is no information on whether individual workers have access to relevant data concerning pay, either within their company or outside the company. Therefore, the obligation to ensure pay transparency and to enable job comparisons is not satisfied.

170. Finally, the Committee notes that the Gender Equality Ombudsperson has a broad mandate and functions within the framework of its mandate and the resources allocated. Therefore, the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

171. The Committee holds that there is a violation of Article 1.c of the 1988 Additional Protocol of the Charter due to the fact that access to effective remedies for pay discrimination victims is not ensured and because pay transparency and job comparisons are not ensured and enabled in practice.

II. ALLEGED VIOLATION OF ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

172. Article 1.c of the 1988 Additional Protocol reads as follows:

Article 1 of the 1988 Additional Protocol – 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

173. UWE states that there are few relevant and reliable figures on equal pay. UWE has referred to a situation whereby women who wish to make complaints find it hard or impossible to obtain comparative data concerning the wages paid. No figures are provided on cases where such data are used. In February 2017, Eurostat presented

figures for the EU-28 contributions to the gender overall earnings gap and no data were provided for Croatia, which means that the country did not supply the necessary information. According to Eurostat figures in 2014, the gender pay gap stood at 10.4% in Croatia (the average gender pay gap in the EU stood at 16.7%) and the gender overall earnings gap in Croatia stood at 23.0% (the average gender overall earnings gap in the EU was 39.8%).

174. UWE further refers to Croatia's fourth and fifth reports distributed in March 2015 by the CEDAW Committee, which noted the following: "The difference between women and men in terms of average gross monthly salary, according to the Croatian Bureau of Statistics, amounted in 2013 to 10.6%. The research of the Zagreb Institute of Economics entitled "An Analysis of Public and Private Sector Wages in Croatia" showed that men, on average, have 10.9% higher salaries per hour of work in all sectors (public, private and state-owned companies). Even the public sector, in spite of the fact that more than 65% of all employed persons work in this sector, recorded a difference of 13.3% in favour of men, which may be the result of greater representation of men in higher posts. The greatest difference in salaries between women and men is in the private sector (16.5%), and the smallest is in state-owned companies (6.2%).

175. Some of the factors that contribute to the gender pay gap are:

- Management and supervisory positions are overwhelmingly held by men. Within each sector men are more often promoted than women and paid better as a consequence. This trend culminates at the very top, where amongst CEOs less than 4% are women.
- Women take charge of important but unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men. Working men spend on average nine hours per week on unpaid care and household activities, while working women spend 26 hours – which is almost four hours every day. In the labour market this is reflected by the fact that more than one in three women reduce their paid hours to part-time, while only one in ten men do the same.
- Women tend to spend periods out of the labour market more often than men. These career interruptions not only influence hourly pay, but also impact future earnings and pensions.
- Segregation in education and in the labour market; this means that in some sectors and occupations, women tend to be over represented, while in others men are over represented. In some countries, occupations predominantly carried out by women, such as teaching or sales, offer lower wages than occupations predominantly carried out by men, even when the same level of experience and education is needed. Pay discrimination, while illegal, continues to contribute to the gender pay gap.

176. UWE also states that although the Government refers to the applicable legislation and the major public policy initiatives, such as the various equality plans, there is no sign of gender mainstreaming in the policies concerned, with regard to 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. From the point of view of gender mainstreaming these are significant shortcomings.

177. UWE further alleges that little or no account is taken of many areas, for instance, the courses of study chosen by women, which all too often are non-scientific and unambitious, the greater number of vocational training courses of a higher standard available for men, the large number of benefits in kind for men and the small number for women, horizontal and vertical segregation in employment, the centuries-old division of roles in the family with no economic value being attached to the time spent on housework, forced part-time working, and failure to ensure proper work-life balance. The Government has not yet taken all the appropriate measures, in particular with regard to the employment equality policy, which is not fully effective. It is disparate in nature and refers to negotiations 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. There is no general framework and the respondent state must therefore introduce one in order to bring about an overall change that is needed to eradicate inequality and discrimination.

2. The respondent Government

178. The Government states that data on average monthly net and gross earnings broken down by sex are based on annual surveys. The latest available and analysed data are relevant for 2015. The average gross earnings of persons in employment in legal entities in the Republic of Croatia who worked for all 12 months in 2015 amounted to HRK 7,978. The average monthly gross earnings of women employed in legal entities in the Republic of Croatia amounted, in 2015, to HRK 7,471 and that of employed men to HRK 8,422. The average monthly paid off net earnings of persons in employment in legal entities in the Republic of Croatia who worked for all 12 months of 2015 amounted to HRK 5,650. The average monthly paid off net earnings of women employed in legal entities in the Republic of Croatia amounted for 2015 to HRK 5,305 and that of employed men to HRK 5,951.

179. In certain economic activities, women earn a higher average salary than men: mining, production of pharmaceutical products, construction, libraries and museums. On the other hand, women show a greater interest in working in economic activities with lower salaries (education, service sector, care sector, public administration) whereas they are underrepresented in economic activities with higher salaries (IT sector, transport).

180. The serious economic crisis in Croatia which unfolded between 2008 and 2014 led to significant job losses. The economic crisis affected men more than women. Within this period of 6 years, the number of employed men decreased by 144,412, while the number of employed women decreased by 76,925. Therefore, the economic crisis affected mostly economic activities that employ more men.

181. There are many different national programs on gender equality and gender mainstreaming initiatives in Croatia.

182. The Government explains the Strategy of Women Entrepreneurship Development in the Republic of Croatia 2014-2020, which is a continuation of the preceding Strategy for the period 2010-2013. The Republic of Croatia is among the few countries that have adopted this type of strategy. The findings from the reports make it possible to identify the key issues for women in the labour market and women entrepreneurship. The long-term focus of the strategy is the continuous implementation of activities that contribute to the positive changes in the value system, behaviour and the environment - all factors that impact women entrepreneurship. The medium-term objectives include the increase in the number of female entrepreneurs and female owners of expanding enterprises.

183. To achieve medium-term objectives, consistent and coordinated implementation of the following strategic goals should be ensured:

- 1) improvement in coherence and public policies networking;
- 2) improving systematic support to women entrepreneurship;
- 3) introduction of female entrepreneurship to the overall institutional infrastructure
- 4) promotion of women entrepreneurship.

184. In order to achieve the objectives set out in this Strategy, an Action Plan was adopted entailing a set of measures and activities to be implemented by the end of 2020. Evaluation of the impact of implemented activities should be carried out at the end of 2017 and 2020. Each measure outlines activities to be implemented, as well as competent authorities and stakeholders, timescales for implementation and allocated financial resources. Each activity contains performance indicators which are to be achieved.

185. According to the Government, one programme deserves particular attention. It concerns a job creation programme for women financed by the European Social Fund, called Make a wish. The project "Make a wish - a job creation program for women" complies with all European and national recommendations on improvement of women's status on the labour market and on the protection of women's rights. The programme also complies with the guidelines for employment policies in EU member states, promoting social inclusion and combating poverty, due to the fact that women in unfavourable situations in the labour market will participate in these activities, and they will care for elderly persons and persons in an unfavourable position. The project is to be implemented within a period of 30 months by units of local self-government and associations. The aim of the program is to create jobs for women in an unfavourable position on the labour market, with a special focus on women in various conditions: over the age of 50, secondary school qualifications as their highest

education attainment, disabled, victims of human trafficking, recovering addicts, victims of domestic violence, and those who are homeless. This project will employ 3,045 women on the whole territory of Croatia, who will work on jobs providing support and care for elderly persons and persons in unfavourable conditions in their communities. Furthermore, the project will be implemented in hard-to-reach areas (rural areas and islands) as well as in those areas where unemployment rate and long-term unemployment rate are higher than the Croatian average.

B – Assessment of the Committee

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

186. According to Eurostat, in 2017, women's gross hourly gender pay gap were on average 16% below in the European Union (EU-28) and 16.1% in the Euro zone (EA-19). As regards Croatia, the hourly gender pay gap in 2017 stood at 11.6%. It was 5.7% in 2010, 8.7% in 2014 and 11.1% in 2016. The gender overall earnings gap was 24.4% in Croatia in 2014, while the EU average stood at 39.6%. The adjusted or “unexplained” gender pay gap is 16.9%, while the EU-28 average is 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*

187. 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.

188. 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).

189. 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.

190. 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).

191. Under Article 1.c of the 1988 Additional Protocol 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).

192. 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.

193. 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.

194. The Committee notes that the Central Bureau of Statistics publishes and produces statistics, showing that the Croatian labour market is highly gender segregated, with both significant horizontal and vertical occupational segregation between men and women.

195. The Committee also notes the Strategy of Women Entrepreneurship Development in Croatia 2014-2020, a continuation of the preceding Strategy for the period 2010-2013. The National strategies have introduced assessment mechanisms to understand the reasons behind the segregation in the labour market.

196. The Committee notes that the policies and measures, adopted in Croatia in recent years took into account evaluations of the previous strategies and the nature of the gender pay gap. However, despite this and despite the fact that the gender pay gap is below the European Union average, the measures adopted by the Government do not reveal any major and coordinated effort to promote equal opportunities through gender mainstreaming. Furthermore, the gender pay gap has increased over the last decade with about 5 percentage points and has almost doubled. Therefore, the Committee considers that the obligation to achieve measurable progress in reducing the gender pay gap has not been satisfied.

197. In the light of the above, the Committee holds that as regards measures to promote equal opportunities of women in the labour market there is a violation of Article 1.c of the 1988 Additional Protocol.

III. ALLEGED VIOLATION OF ARTICLE 1.D OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS ENSURING A BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES

198. Article 1.d of the 1988 Additional Protocol reads as follows:

Article 1 – 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

199. UWE states that in Croatia there is no legislation on balanced representation of women and men on boards and there are very few women in decision-making positions in private companies. The proportion of women on boards is 22.2%, according to a January 2016 European Union study. In the absence of legal requirements, there are few women who are CEOs or executives or supervisory board members. UWE further notes that it is quite apparent that both company managers and political leaders hardly comply with the legislation on gender equality and certainly not with its spirit. Men have simply shared power among themselves for centuries.

200. UWE further recalls that even though the Government states that it supports the policy of a gender quota to assure 40% representation of women on boards, there is no legislation on the matter.

2. The respondent Government

201. The Government states that there was a total of 305 members of management boards in Croatia, which accounts for an average of 2,18 members per board. There were 60 boards (or 42,85%) with only one board member. Due to the relatively small number of board members, it is difficult to achieve equal gender representation. In situations where there is a single member in the management board, which accounts for 42,85% of management boards, it is impossible to legally regulate equal gender representation.

202. The supervisory board is the main body overseeing the company’s operations. The supervisory board members are elected by the Company assembly. The average number of supervisory board members on 31 December 2015 was 5-14. There were 28 boards and they had a minimum number of three members. There were 150 women among 719 members on supervisory boards, which accounted for 20.9%. The

particularly positive trend in 2015 was that the representation of women on supervisory boards at the end of 2015 was 41.4% higher than the representation of women on management boards.

203. The Government further emphasizes that the majority of the companies in the Republic of Croatia are small and medium-sized enterprises and that in such companies, the founders and owners are usually managing directors. Therefore, the work of the competent authorities is directed towards non-normative activities with the aim of promoting female entrepreneurship (The Strategy of Women Entrepreneurship Development in the Republic of Croatia for the period of 2014-2020) as well as initiating entrepreneurial activities that will lead to a higher representation of women in company management structures. As the Croatian economy is dominated by small and medium-sized enterprises with few employees and low annual turnover, the Government considers that the best results in increasing women representation may be achieved by initiating and developing women entrepreneurship. The management structure, particularly in micro enterprises is determined by the ownership structure. According to the data published by the National Bureau of Statistics in December 2016, there were 144,522 active business entities (including 114,364 companies). There were 58,465 business entities that did not have a single employee, and 70,917 businesses entities that had less than ten workers.

B – Assessment of the Committee

204. The Committee considers that Article 1.d of the 1988 Additional Protocol 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 in 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).

205. 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%.

206. Finally, the Committee recalls that in respect of Article 1.d of the 1988 Additional Protocol, as for Article 1.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.

207. As regards Croatia, the Committee notes that there exists no statutory framework on representation of women in decision-making positions in private enterprises. In April 2019, according to the statistical data produced by EIGE the average share of women on boards of the largest listed companies registered reached 27.8% for the 28 EU countries. For Croatia, the figure was 23.7% of women present on boards of the largest listed companies. It was 15.6% in 2010 and 22.1% in 2016. The percentage of female CEOs of the largest listed companies was 15.8% in April 2019.

208. The Committee further notes the information provided by the Government, acknowledging the fact that women are under-represented in decision-making positions and explaining that the majority of companies in Croatia are very small and have no more than two to three management board members, which makes it very difficult to issue any legislation in this respect. However, the Committee considers that a balanced representation is far from being achieved and that progress is very slow.

209. The Committee notes that the Government has taken certain measures to meet its positive obligations to tackle vertical segregation in the labour market. However, these measures have not led to the balanced representation or substantive improvements as regards the representation of women in decision-making positions within private companies.

210. Therefore, the Committee holds that there is a violation of Article 1.d of the 1988 Additional Protocol.

IV. REQUEST FOR COMPENSATION

211. 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.

212. 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 Article 1.c of the 1988 Additional Protocol as regards recognition of the right to equal pay in the legislation;
 - unanimously, that there is a violation of Article 1.c of the 1988 Additional Protocol on the ground that access to effective remedies is not ensured;
 - unanimously, that there is a violation of Article 1.c of the 1988 Additional Protocol on the ground that pay transparency is not ensured;
 - by 12 votes to 3, that there is no violation of Article 1.c of the 1988 Additional Protocol as regards effective bodies;
- unanimously, that there is a violation of Article 1.c of the 1988 Additional Protocol 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 1.d of the 1988 Additional Protocol on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies.



Kristine DUPATE
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary