



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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Croatia
Complaint No 126/2016

**RESPONSE FROM UWE TO THE GOVERNMENT'S
OBSERVATIONS ON ADMISSIBILITY**

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 126 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

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Respondent: Croatia

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 14 December 2016, the High Contracting Party, Croatia, represented by Mr Tomislav Čorić, Minister for Labour and the Pension System, stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

By letter dated 31 January 2017, Mr Kristensen, Deputy Executive Secretary of the European Committee of Social Rights invited the UWE to present its reply to the states' observations by 28 February 2017. The same day, the UWE asked to benefit from the same treatment as that accorded to states, by being provided with a translation of their observations in order to avoid any misinterpretations. On 7 February 2017, the UWE was informed that the deadline would be adjusted to one month following the forwarding of the translation of the observations. The French translation was sent on 23 February 2017.

Croatia notes some delay in the forwarding of documents and information. The UWE shall make no comment on this as it was not responsible for this task.

It will be clear to the European Committee of Social Rights, in the light of the explanations given in this reply, that the collective complaint lodged by the UWE should in contrast be found to be admissible.

1. On Croatia's questioning of the UWE's competence to lodge a collective complaint

Croatia considers on the basis of Article 3 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, that INGOs may submit complaints in accordance with the procedure only in respect of those matters regarding which they have been recognised as having particular competence.

The established case law of the European Committee of Social Rights has consistently acknowledged the standing of INGOs, some of which specialise in human rights issues (Equal Rights Trust v. Bulgaria, Complaint No. 121/2016; Greek General Confederation of Labour v. Greece, Complaint No. 111/2014; FIDH v. Ireland, Complaint No. 110/2014; Médecins du Monde International v. France, Complaint No. 67/2011; Quaker Council for European Affairs v. Greece, Complaint No. 8/2000; Defence for Children International v. The Netherlands, Complaint No. 47/2008).

But here, is it being claimed that the UWE does not have standing? Surely, the UWE is eminently qualified to be concerned about equal pay between women and men for equal work. If this organisation is not qualified, then no women's organisation is.

In order to obtain INGO accreditation at the Council of Europe, European national associations, members of the GWI, successor in title to the IFUW, decided to set up the UWE with the precise aim of taking action at this regional level in Europe.

This is immediately apparent from paragraph 2 of Article 2 of its Constitution, as quoted by Croatia:

“To promote action consistent with the purpose of IFUW by encouraging co-operation between its European members at various levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the programme of IFUW”.

However, Croatia failed to quote paragraph 1 of Article 2:

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

Article 2 of the UWE Constitution also makes it clear that *“UWE/GEF DU is a regional group of IFUW, has participative NGO status with the Council of Europe and is a member of the European Women’s Lobby”.*

This therefore proves that the UWE is perfectly qualified. It should be added that in the same Article 2, the reference to the social purpose of the IFUW, now the GWI, founded in 1919 as indicated in the collective complaint further strengthens this qualification, and this explains why the headquarters and details of the website were included in the collective complaint (Doc. 79, 80).

Article 1 of the GWI Constitution defines its social purpose as follows:

- education for women and girls;
- promote international co-operation, friendship, peace and respect for human rights for all, irrespective of their age, race, nationality, religion, political opinion, gender and sexual orientation or other status;
- advocate for the advancement of the status of women and girls; and
- encourage and enable women and girls to apply their knowledge and skills in leadership and decision-making in all forms of public and private life.

Subsequently amended, with effect from 26 August 2016, in very similar terms:

- promote lifelong education to the highest levels for women and girls;
- encourage and enable women and girls to apply their knowledge and skills in leadership and decision-making in all forms of public and private life;
- advocate for the advancement of the status of women and girls; and
- promote international co-operation, friendship, peace and respect for human rights for all, irrespective of their age, ethnicity, nationality, religion, political opinion, gender and sexual orientation or other status.

Reference should also be made to Article 3, paragraph 1 *“Academic requirements for membership: The requirements for individual membership in a national federation or association and for independent members shall be study at a recognised institution of higher education followed by the award of a degree, diploma or equivalent qualification”.*

In the instant case, the ECSR will note that the direct social purpose gives evidence of UWE's standing in this field which is further strengthened, if this were necessary, by its indirect social purpose.

The natural persons, members of these associations are women graduates who believe that the emancipation of women will also come about through education and training, to enable them to be in better position to take part in these various struggles, such as equal pay for women and men for the same work. They are not specifically academics, far from it.

Women from all backgrounds working in a wide range of fields in the private and public sectors have come together to obtain their fundamental rights, which include equal pay. Very often they are lawyers, law lecturers, faculty deans, doctors, architects, engineers, journalists, trade unionists, women in leadership posts, elected representatives, etc. or quite simply employees in the private and public sector. More than 9,000 women in Europe in this movement are unanimous in their outrage at not having equal pay for doing the same work as their male colleagues.

And clearly, in application of the statute, it should be noted that gender equality is a major focus of the Council of Europe's strategy in 2017 with equal pay a key concern, as it is for the European Women's Lobby. This is one of the major issues being fought for in Europe, as amply demonstrated by the various demonstrations and strikes by women on 8 March 2017 throughout Europe. The UWE, through these collective complaints, is therefore acting entirely consistently with its Constitution, using its capacities and aptitudes to bring this complaint before the European Committee of Social Rights.

Furthermore, the UWE is, and always has been, a member of the board of administration of the European Women's Lobby, and is represented on its Bureau, as the Treasurer is a UWE member. In addition, national NGOs which are UWE members belong to the national co-ordinations of the European Women's Lobby.

The excellence of the teams of representatives in various places is well-known and acknowledged; the contributions from national associations, alone or acting in co-operation, have led to clear progress in the fundamental rights of women, and equal pay is one of the key areas of action in various European countries.

The work carried out without interruption since 1983 with the Council of Europe has enabled the UWE to be given continual accreditation and then authorisation to lodge collective complaints of violations of the European Social Charter. Evidence of this has been amply submitted.

Furthermore, on 29 January 2015 the Conference of INGOs, one of the pillars of the Council of Europe quadrilogue, alongside the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities elected a UWE member as gender equality expert for a three-year term of office.

As such, this gender equality expert takes part in numerous Council of Europe equality-related activities in the various committees, including the Equality Committee, and also in working

groups drafting practical tools for states, and recommendations or resolutions for the Committee of Ministers. This is a further demonstration of the UWE's expertise.

It would be paradoxical for the UWE to be regarded as an INGO that is particularly qualified to take part in the Council of Europe's work on equality issues, including the question of equal pay for equal work, and then for the European Committee of Social Rights to declare its complaint inadmissible through lack of standing.

It should also be noted that other states against which this collective complaint has been lodged in relation to this same violation do not in any way challenge the standing of the UWE.

In the light of the foregoing, the Committee will find that the UWE is perfectly qualified and is accordingly competent to submit this collective complaint.

2. On the relevance of the analyses and arguments in support of the collective complaint

The Committee will note that in the collective complaint, the texts founding the violation are indeed all cited. While Croatia has not ratified the revised European Social Charter, it has nonetheless ratified the provisions which are the subject of the collective complaint. It is somewhat odd to consider these texts to be independent. Accordingly, no inadmissibility can be alleged as the complaint refers to texts that have indeed been ratified.

All the documents submitted prove that there is unequal pay for equal work between men and women. One only has to itemise them to see that the Social Charter has been violated, since there is an actual, proven and inescapable situation which is publicly acknowledged throughout the reports submitted by the state itself. Are the state's own words not to be considered reliable when it acknowledges this inequality before institutions such as the International Labour Organisation (ILO) and the Committee on the Elimination of Discrimination against Women (CEDAW) or when it itself explains the weaknesses in its policies? It is the unsatisfactory way of dealing with this inequality that constitutes a violation of the provisions of the Charter.

The European Committee of Social Rights should confirm this.

Moreover, the Croatian legal texts were submitted under documents 73 to 78, as well as those referred to in the collective complaint (pages 16 and 17):

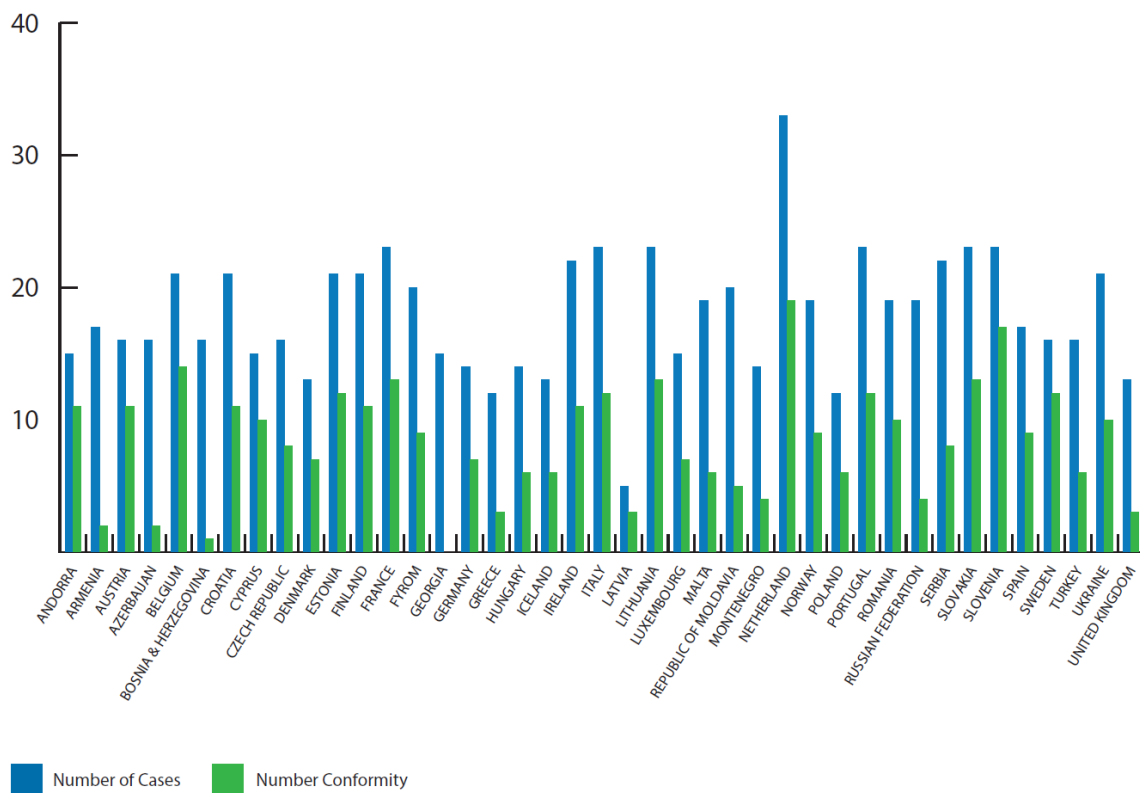
Reference is also made to the examination of Croatia's 4th and 5th reports to the CEDAW, citing the information provided by Croatia, which is therefore particularly compelling. All the documents referred to in these reports are of course included in those submitted in the complaint (complaint, pages 25 and 26, Docs. 40, 40/1, 40/2):

“On the other hand, when examining Croatia's fourth and fifth reports distributed in March 2015, the CEDAW Committee 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 “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 leading positions. The greatest difference in salaries between women and men is in the private sector (16.5%), and the smallest in state-owned companies (6.2%). In accordance with the National Policy, the Equal Pay Day has been celebrated in the RoC since 2011” (Doc. 40, page 22).

The “European Committee of Social Rights Conclusions in a Nutshell 2012-2015”, produced as document 38 shows that with regard to the articles relating to labour rights, including the right to a fair remuneration (Article 4), Croatia has an insufficient level of conformity (complaint page 11, Doc. 38).



Also of relevance are the ECSR conclusions of 23 December 2015 on Croatia’s failure to submit a report (complaint page 19, Doc. 46). This complaint is therefore of considerable value.

What else can be said? It has been clearly demonstrated that in Croatia, there is in practice no equal pay between women and men for equal, similar or comparable work, to use the terminology of the reports of the European Committee of Social Rights, contrary to what is claimed in the observations submitted by Croatia.

This is confirmed by all the national, European and international analyses, and the various reports to which the country is subject. And looking at these reports, it can be seen that the data in question have been provided by Croatia itself.

The monitoring bodies, access to justice, the failure to shift the burden of proof are all the responsibility of the state which allows this situation of inequality to persist, constituting a violation of the Charter and an unsatisfactory way of ensuring its application.

With regard to women in decision-making positions, the Charter is not applied because all the conditions must be put in place to ensure equal pay between women and men without any discrimination. The fact that there are so few women in decision-making positions is evidence of discriminatory treatment against women, which is clearly in violation of the Charter, and shows the refusal of the state to take any remedial action.

This inequality has been proved in law and in practice. There is nothing in the observations submitted by Croatia which supports the claim that UWE does not have standing. The observations relate primarily to the merits.

3. On Croatia's allegation of the political motivation of the complaint

No problem regarding admissibility had been raised, for example, in the Greek General Confederation of Labour v. Greece case, Complaint No. 111/2014, in which the wording of the complaint, as presented, also comprised a political dimension in the highest sense of the term.

Croatia challenges the contention that unequal pay between women and men for equal work is rooted in the culture and derives from history and the slow pace of policies pursued in recent years as a result of serious obstacles preventing equal pay from being implemented.

It even criticises this well documented complaint, claiming it is vague and unclear, whereas it is precise and detailed.

Since Plato in "The Statesman", a distinction has been drawn, which has been further developed over the centuries, between party politics, the preserve of political parties, a necessarily partisan ideology to be implemented, and politics in the much broader sense, as promoted by civil society, independent of any ideology or political party, but acknowledged as being human-oriented and universal.

The UWE is independent of all political parties. It is therefore odd that the representative of a government whose members have been brought to power by means of elections based on an ideology, should make such an allegation against the UWE.

Legal remedies are available to different applicants through legal instruments. The European Social Charter is one of these instruments as it is viewed by some as the social constitution of Europe, making it possible, in a totally unique way, for a collective complaint to be submitted, in the first instance, to a committee comprising judges of the highest level, independent of the states

which have appointed them. It is to the credit of the Council of Europe and its member states that such a quasi-judicial body has been established.

While the aim is to spotlight the situation in many countries of Europe, the failings at national level are clearly set out for each country in each complaint. Drafting the complaint was a long and arduous endeavour, as it was wished to facilitate the task of the rapporteurs. However, apart from the statement of facts and the highlighting of this manifest, persistent and abnormal situation of inequality in the various countries, each complaint is entirely tailored to each country. One needs only to read them to see the specific issues raised which are different for each country.

This inequality is to be found in Croatia, as has been proved by the UWE. And this situation has, as its corollary, the violation of the revised European Social Charter.

Why sign and ratify texts if they are not applied in practice? There is, accordingly, no political motivation in the sense of partisan ideology on the part of the UWE, and Croatia gives no justification for this allegation. The UWE's action must therefore be declared admissible.

1. Concerning the number of collective complaints and consultation among states

The European Committee of Social Rights will notice similarities in the observations of certain states. Indeed this consultation is confirmed by the observations of the Netherlands in which it is stated (page 1, paragraph 6): *“Having become aware of the submission of fifteen similar complaints, it was agreed between the Government Agents that each of the respondent states will formulate its own observations on admissibility.”*

Is this decision to engage in consultations among the states concerned any more normal than a joint action, under the auspices of an accredited INGO – the UWE – by national women's movements not authorised to act directly? Is it not intended to paralyse the attempt to highlight violations by the states that are signatories to the Charter of the undertakings they have entered into?

Is it not the case that the question of equal pay between women and men is such a burning issue that it should of necessity be examined on the merits by the European Committee of Social Rights?

It will also be noted that there are other states against which the same collective complaint has been lodged, alleging, using the same presentation of national data, unequal pay, discrimination and inadequate effectiveness in practice of enacted legislation but which have not found any grounds for inadmissibility and have therefore not written any observations as to the admissibility of the UWE's action.

The UWE's complaint should therefore be declared admissible

ON THESE GROUNDS,

AND SUBJECT TO ANY THAT MIGHT BE RAISED IN ADDITIONAL MEMORIALS OR MENTIONED AT
A HEARING,

The European Committee of Social Rights is asked to confirm the competence of the University
Women of Europe, UWE / Groupe Européen des Femmes diplômées des Universités, GEFDU to
lodge a collective complaint against Croatia,

and to examine this collective complaint on the merits.

Without prejudice
19 March 2017

A handwritten signature in black ink, appearing to read "Anne Meyer". The signature is written in a cursive style with a horizontal line above the "e" in "Meyer".

ADDITIONAL DOCUMENTATION

79. May 2015, Constitution and Rules of Procedure of Graduate Women International, GWI
80. 26 August 2016, Constitution and Rules of Procedure of Graduate Women International, GWI