

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



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Case Document No. 5

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

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

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I. INTRODUCTION

A collective complaint registered as number 126/2016 (hereinafter referred to as: the Complaint), lodged by the University Women of Europe (UWE) against the Republic of Croatia, alleges that the situation in the Republic of Croatia constitutes a violation of Article 1 of the European Social Charter and of Article 1 of the 1988 Additional Protocol. The complaint alleges that the Republic of Croatia violates the provisions of the European Social Charter because of:

- (a) failure to undertake measures in order to ensure equal pay for women and men for the equal, similar or comparable work, citing the fact that the Labour Inspectorate and the Ombudsperson are not able to fight efficiently against wage discrimination between men and women.
- (b) the absence of legislation allowing for equal access of women to decision-making boards of private enterprises .

The Republic of Croatia denies these claims in their entirety. The wording of the complaint is too general, and it refers to data and facts obtained from numerous world-wide surveys which did not include the Republic of Croatia. The complaint fails to provide specific examples showing that the situation in Croatia is not in conformity with Article 1 of the European Social Charter and with Article 1 of the 1988 Additional Protocol. Furthermore, the complaint fails to specify how the legislation of the Republic of Croatia denies women the right to equal access to decision-making boards of private enterprises.

The Republic of Croatia undertakes all appropriate measures so as to ensure equal opportunities and equal treatment in matters of employment, without discrimination on the grounds of sex. Equal pay for women and men is one of the fundamental principles of labour legislation. In addition to legislative measures, the Republic of Croatia has also put in place institutional mechanisms to ensure equality between women and men.

A detailed overview of legal context and facts will outline all measures undertaken by the Republic of Croatia so as to create conditions wherein workers will not be discriminated against on the grounds of their gender.

II. Legal framework

A) The Constitution of the Republic of Croatia

Promotion of gender equality between women and men is one of the fundamental values of the Croatian constitutional order, underpinning the interpretation of the Constitution of the Republic of Croatia¹. Gender equality means that both women and men are equally present in all segments of public and private life, that they enjoy an equal status, equal access to all rights and equally benefit from the achieved results.

Pursuant to the provision of 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. Therefore, all persons are equal before the law.

Furthermore, pursuant to the provision of Article 55 of the Croatian Constitution “ everyone shall have the right to work and to freedom of work”. Everyone shall be free to choose his/her vocation and occupation, and shall have access to each workplace and post under equal conditions.

B) The Labour Act

The Labour Act² is a general regulation governing employment relationship in the Republic of Croatia. As any other regulation, the Labour Act complies with the provisions of the Constitution of the Republic of Croatia. Given the fact that the complaint lodged by the University Women of Europe alleges several times that the terms in legislation and regulations are used in the masculine form, it should be noted that the provision of Article 3 of the Labour Act explicitly specifies that gender neutral language shall be used therein and shall apply equally to both men and women³.

The provision of 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. Any direct or indirect discrimination in the area of labour and working conditions shall be prohibited, including the selection criteria and requirements for employment, advancement in employment, professional guidance, education, training and retraining, in accordance with

¹Article 3 The Constitution of the Republic of Croatia („Official Gazette“, nos. 56/90, 135/97, 8/98- consolidated text, 113/00, 124/00- consolidated text, 28/01, 41/01- consolidated text, 55/01- corrigendum, 76/10, 85/10- consolidated text and 05/14)

²The Labour Act („Official Gazette“, no. 93/14)

³It should also be noted that the Croatian translation of the European Convention on Human Rights uses the term ‘human’ to denote all people, meaning both women and men.

the Labour Act and special laws and regulations.⁴ The employer shall be obliged to protect the worker's dignity during the work in case of acts, uncalled for and contrary to this Act and special legal provisions, of superiors, collaborators and persons with whom the worker contacts on a regular basis while performing his tasks.

In the process of selecting the applicants for a job (an interview, testing, survey or similar) and concluding an employment contract as well as during the employment relationship, the employer may not request from the worker any information that is not directly related to the employment relationship. The answers to the questions that are not allowed may be sustained. A fine in an amount ranging from HRK 31,000.00 to 60,000.00 shall be imposed on the employer that requests such information from the workers, while a fine in an amount ranging from HRK 4,000.00 to 6,000.00 shall be imposed on an employer who is a natural person and the responsible person in the employer who is a legal person.

Pursuant to Article 26 paragraph 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 measures⁵. 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 regulations⁶. 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.

The complaint lodged by the University Women of Europe states that women who have given birth are dismissed on account of that, immediately after the protected period expires, if such period exists in a given country. It should be noted that the Republic of Croatia has regulated in great detail the rights of pregnant workers, parents and adoptive parents (from Articles 30 to 36 of the Labour Act):

Prohibition of discrimination of pregnant workers, women who have recently given birth or are breastfeeding

Article 30

(1) The employer may not refuse to employ a woman due to her pregnancy or offer her the conclusion of an amended employment contract under less favourable conditions on the

⁴ Specific Acts are as follows: The Anti-discrimination Act ("Official Gazette", No. 85/08 and 112/12) and the Act on Gender Equality ("Official Gazette", number 82/08 and 69/17).

⁵ The employer is not subject to this obligation provided that such matters are regulated in the relevant collective agreement.

⁶ Article 226 paragraph 1 subparagraph 11 of the Labour Act.

grounds of her pregnancy, recent childbirth or breastfeeding within the meaning of specific provisions.

(2) The employer may not request any information whatsoever about pregnancy or direct any other person to do so, unless the worker personally demands for a particular entitlement provided for by laws, regulations and administrative provisions for the purpose of protecting pregnant workers.

Protection of pregnant workers, women who have recently given birth or are breastfeeding

Article 31

(1) The employer shall be obliged to offer a pregnant worker, a worker who has recently given birth or is breastfeeding within the meaning of a specific provisions, who performs works that have harming effects on her or the child's life or health, an appendix to the employment contract during the entitlement period providing for a fixed-term performance of other appropriate tasks.

(2) In the event of a dispute between the employer and the worker, only a physician specialist in occupational medicine shall be competent to assess the appropriateness of the tasks performed by the worker or other works offered in the case referred to in paragraph 1 of this Article.

(3) Where the employer is not in the position to act in a manner provided for in paragraph 1 of this Article, the worker shall be entitled to take a leave in accordance with specific provisions.

(4) With the expiry of entitlement in accordance with specific provisions the appendix referred to in paragraph 1 of this Article shall also cease to take effects and the worker shall continue to perform the works she has previously performed under the employment contract.

(5) The appendix to the employment contract referred to in paragraph 1 of this Article may not result in the reduction of the worker's remuneration.

Presumption of full time work

Article 32

Where the previous length of employment relationship is of relevance for acquiring certain rights arising from the employment relationship or pertaining thereto, periods of maternity, paternity or adoption leave, part-time work, periods of short-time work due to intensified childcare, the leave of pregnant women or a breastfeeding mother, and the periods of leave or short-time work having to care for a child with serious development disabilities shall be regarded as full-time work.

Maternity and parental rights

Article 33

The worker shall exercise their maternity and parental rights during the employment relationship in accordance with specific provisions⁷.

Prohibition of dismissal

Article 34

(1) During pregnancy, maternity, paternity or adoption leave, periods of part-time work, periods of short-time work due to intensified childcare, the leave of pregnant women or a breastfeeding mother, and the periods of leave or short-time work due to the care for a child with serious development disabilities, that is within fifteen days after the end of pregnancy or the end of use of such entitlements, the employer may not terminate the employment contract of the pregnant woman and a person exercising any of these rights.

(2) The dismissal referred to in paragraph 1 of this Article shall be null and void if on the date of dismissal the employer is aware of circumstances referred to in paragraph 1 of this Article or if the worker within fifteen days after the delivery of notice informs the employer about the circumstance referred to in paragraph 1 of this Article and supports it with an adequate certificate issued by a competent physician or another competent authority.

(3) The employment contract for a person referred to in paragraph 1 of this Article shall be terminated upon the death of the employer who is a natural person, upon the termination of a small business by virtue of law or by the deregistration of a sole trader.

(4) The employment contract of the person referred to in paragraph 1 of this Article may during the liquidation procedure, in accordance with specific provisions, be terminated on economic reasons.

The worker's right to terminate the employment contract by an extraordinary notice of termination

Article 35

(1) A worker exercising the right to maternity, paternity or adoption leave, part-time work, short-time work due to intensive childcare, leave of pregnant women or a breastfeeding mother, and on the leave or short-time work having to care for a child with serious development disabilities or a worker whose employment contract is held in abeyance until

⁷The Maternity and Parental Benefits Act ("Official Gazette", Nos. 85/08, 110/08, 34/11, 54/13, 152/14 and 59/17)

the child's third year of age in accordance with specific provisions, may terminate the employment contract by giving an extraordinary notice of termination.

(2) An employment contract may be terminated in a manner referred to in paragraph 1 of this Article fifteen days prior to the date of the worker's reinstatement, at the latest.

(3) A pregnant worker may terminate the employment contract by giving an extraordinary notice of termination.

The right to reinstatement to the former or an equivalent position

Article 36

(1) Upon the expiry of maternity, paternity, adoptive leave, a leave for the purpose of taking care of and nursing a child with severe development disabilities and the abeyance of the employment relationship until the child's third year of age in accordance with specific provisions, the worker who exercised any of these rights shall be entitled to return to his former position within one month after the date having notified the employer about the end of exercising of such a right.

(2) Where there is no need for the works performed by the worker prior to the exercise of rights referred to in paragraph 1 of this Article, the employer shall be obliged to offer the conclusion of employment contract for an equivalent post with working conditions not less favourable compared to those of the works performed by the worker prior to the exercise of such a right.

(3) The worker who has exercised the right referred to in paragraph 1 of this Article shall be entitled to additional training, where there has been a change in the technique or method of work, and to benefit from any improvement in working conditions to which he would have been entitled during his absence.

Serious offences by employers

Article 228

(1) A fine in an amount ranging from HRK 31,000.00 to 60,000.00 shall be imposed on the employer who is a legal person for:

5) requesting any information about pregnancy or directing any other person to do so, unless the worker personally demands for a particular entitlement provided for by law or another regulation for the purpose of protecting pregnant workers (Article 30, paragraph 2),

6) failing to reinstate a worker after the expiry of maternity, paternity, adoptive leave, a leave for the purpose of taking care of and nursing a child with severe development disabilities and the abeyance of the employment relationship until the child's third year of age in accordance with specific provisions, under the conditions stipulated by this Act, or for failing to offer the

conclusion of employment contract for another equivalent job, or for failing to reinstate the worker within one month after the date of having notified the employer about the end of exercising of such a right (Article 36, paragraphs 1 and 2),

Most serious offences by employers

Article 229

(1) A fine in an amount ranging from HRK 61,000.00 to 100,000.00 shall be imposed on the employer who is a legal person for:

8) refusing to employ a woman due to her pregnancy or, contrary to the provisions of this Act, for offering her the conclusion of an amended employment contract under less favourable conditions on the grounds of her pregnancy, recent childbirth or breastfeeding within the meaning of specific provisions (Article 30, paragraph 1),

9) terminating the employment contract of the pregnant worker, or of any person exercising any of the rights listed below, during pregnancy, maternity, paternity or adoption leave, periods of part-time work, periods of short-time work due to intensified childcare, the leave of pregnant women or a breastfeeding mother, and the periods of leave or short-time work due to the care for a child with serious development disabilities, i.e. within fifteen days after the end of pregnancy or the end of exercise of any of such rights (Article 34, paragraph 1),

Taking into consideration these provisions, it should be noted that the employer may not refuse to employ a woman due to her pregnancy or offer her the conclusion of an amended employment contract under less favourable conditions. Where works have harmful effects on mother's or the child's life or health, the employer must offer an appendix to the employment contract providing performance of other tasks whereby woman's existing salary may not be decreased. During the entitlement period referred to in Article 34 of the Labour Act, the employer may not terminate employment contract, even in the case of worker's misconduct. The employer may not terminate the employment contract of a pregnant woman and of a mother exercising her right to work half-time due to intensified child care even where a worker has committed serious breach of the employment contract obligation (failing to come to work, causing damage for the employer and similar).

As for equal pay, it should be noted that 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.

The nature of work is assessed based on the characteristics present in general, and any differences occurring from time to time or rarely and have no effect on the nature of the work in general, are of no importance. The Labour Act specifies in detail what the term remuneration includes. Namely, remuneration means basic or minimum salary plus any additional benefits of any kind paid, either directly or indirectly, in cash or in kind. This provision is of great importance since differences in pay between men and women often result from differences in other benefits a worker is entitled to (entitlement to use company car, company phone, bonus, etc) whereas basic salary might be the same. Equal pay for women and men is an imperative provision of the Labour Act, consequently, any provision in an employment contract, collective agreement, working regulations or other legal act stating otherwise is null and void. Null and void provisions have no legal effect and the court must be mindful of them *ex officio*.

Judicial protection of the rights arising from employment is set out in the provision referred to in Article 133 of the Labour Act. The worker who considers that his employer has violated any of his rights arising from employment may require from the employer the exercise of this right within fifteen days following the receipt of a decision violating this right, or following the day when he gained knowledge of such violation. If the employer does not meet the worker's request within fifteen days, the worker may within another fifteen days seek judicial protection before the court having jurisdiction in respect of the right that has

been violated. Where a worker files a claim for compensation of damages or any other financial claim arising from employment relationship, the period of statute of limitations for such claims is five years.

The legal framework for the protection of worker's dignity is prescribed by the provision of Article 134 of the Labour Act. The employer employing at least 20 workers shall be obliged to appoint a person who would, in addition to him, be authorised to receive and deal with complaints related to the protection of the workers' dignity. The employer or appointed person shall, within a maximum of eight days from the day of filing the complaint, examine the complaint and take all the necessary measures appropriate for a particular case, to stop the harassment or sexual harassment, if he has established that such harassment has taken place. Where the employer fails to take measures for the prevention of harassment or sexual harassment within the specified time limit, or if the measures taken are clearly inappropriate, the worker who is a victim of harassment or sexual harassment shall have the right to stop working until he is ensured protection, provided that he sought protection in the court that has jurisdiction, within the following eight days. During the period of interruption of work, the worker shall be entitled to remuneration in the amount he would have earned if he had actually worked.

As for the gender equality, reference is also made to provision of Article 142 paragraph 3 of the Labour Act which states that when members of the works council are elected, account must be taken of equal representation of all organizational units and groups of employees (by gender, age, qualifications, jobs they perform, etc.). This provision means that proportional representation of gender is a vital element in nominating works council members so that all workers enjoy representation. In case the provision of Article 142 paragraph 3 of the Labour Act is not applied when electing members of works council, a minimum of twenty-five percent of all workers employed by the employer may request that the works council be disbanded⁸.

C) The Act on Gender Equality

The Act on Gender Equality 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 the provision of Article 2 of the Act on Gender Equality no one shall suffer adverse effects as a result of their involvement in discrimination-related procedure.

Article 3 of the Act on Gender Equality 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 equality between women and men.

⁸Article 162 paragraph 4 of the Labour Act

Provision of Article 4 thereof is of great importance stating that this Act may not be interpreted or implemented so as to restrict or diminish the purpose of warranties on gender equality enshrined in:

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

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

Article 13 of the Gender Equality Act 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.

In order to perform monitoring, developing analyses or reviewing the existing activities in the field of gender equality, and particularly for the purpose of adopting effective measures, the provision of Article 17 of the Act on Gender Equality 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

Any persons who consider that as a result of discrimination their right has been infringed upon may lodge a complaint to a regular court of general jurisdiction. A joint claim may be filed in discrimination cases. Where parties to the proceedings claim that they have been wronged because the principle of equal treatment has not been applied, they have the obligation to establish facts from which it may be presumed that there has been discriminatory treatment. In such a case the burden of proof shall be on the respondent to prove that there has been no discrimination.

The Act on Gender Equality lays down a general framework for the protection and promotion of gender equality and it defines and regulates the method of protection from discrimination on grounds of sex and establishment of equal opportunities for women and men.

D) Anti-discrimination Act

Various statutory provisions prohibit discrimination, including the Constitution of the Republic of Croatia, other international agreements to which the Republic of Croatia is one of the Parties, and in particular the Anti-discrimination Act. Unlawful (illicit) placing of any person, or a group of people in a less favourable position is deemed to be discrimination. Therefore, discrimination presents unlawful placing of a person in a less favourable position in relation to other persons in a comparable situation, where criterion for differentiation

may not be objectively justified by a legitimate aim. Discrimination is a treatment whereby a person is, has been, or could be placed in a less favourable position than other persons in a comparable situation⁹.

Grounds of discrimination include different forms of discrimination based on which it is prohibited to make distinction among subjects without a justified cause. In Anti-Discrimination Act there are 18 grounds of discrimination, including gender and gender identity. The Anti-Discrimination Act is applied in the field of employment and working conditions:

Scope

Article 8

This Act shall apply to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and 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.*

Discrimination is prohibited in all its manifestations. Activities of the central body responsible for the suppression of discrimination shall be carried out by the Ombudsman. The Ombudsman warns the public about the occurrence of discrimination, and also provides necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations.

E) Companies Act

⁹ The provision of Article 3 of the Constitution defines equality as the highest value of the constitutional order of the Republic of Croatia.

Pursuant to the provisions of the Companies Act¹⁰ 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 board members are appointed by the Supervisory Board. In a single board, one-tier system, this function is performed by executive directors appointed at the general meeting. Among the issuers of shares on 31st December 2015, 2 of them had a one-tier system, while the remaining 142 of issuers had two-tier system.

There were 305 members of the Management board, which accounts for an average of 2,18 members per issuer. 60 issuers (or 42,85%) had only one board member. Due to such a relatively small number of board members, it is difficult to achieve equal representation of both genders. In the situations where there is a single member in the management board, which accounts for 42,85% of the management boards, it is impossible to legally regulate equal representation of both genders.

Supervisory board is the main body overseeing the company's operations. The members of the supervisory board are elected by the Company assembly. The average number of members in the supervisory boards on 31st December 2015¹¹ was 5,14. 28 issuers had a minimum number of 3 members. There were 150 women among 719 members in the supervisory boards, which accounts for 20,86%. However, the particularly positive trend in 2015 was that the representation of women in supervisory boards at the end of 2015 was 41.42% higher than the representation of women in management boards.

Furthermore, it should be noted 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 higher representation of women in management structures of companies. We believe that in circumstances when the Croatian economy is dominated by small and medium-sized enterprises with few employees and low annual turnover, 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). 58 465 business entities did not have a single employee, while 70 917 businesses entities had less than 10 employees.

¹⁰ Official Gazette No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15

¹¹ According to the annual report on corporate governance for 2015 prepared by the Croatian Financial Services Supervisory Agency.

III. Institutional Framework

Pursuant to the provisions of the Act on Gender Equality, institutional framework for gender equality consists of:

1. The Ombudsperson for Gender Equality
2. Office for Gender Equality of the Republic of Croatia
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

1.) The Ombudsperson for Gender Equality

The first Ombudsperson for Gender Equality was appointed in 2003, at the proposal of the Government of the Republic of Croatia. 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.

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

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

The Ombudsperson for Gender Equality acts in an independent manner, monitors the implementation of the Act on Gender Equality and other legislation pertaining to gender equality and reports to the Croatian Parliament at least once a year. The Ombudsperson for Gender Equality 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 Act on Gender Equality, whether they have suffered such infringements directly or on behalf of third parties, with the consent of the mistreated party.

Although the official website of the Ombudsman for Gender Equality contains extensive resources on gender equality in the Republic of Croatia, not all of the content is translated into English. The Annual Reports that the Ombudsperson had submitted to the Croatian Parliament in the period from 2003 to 2009 are, however, available in English translations. Since 2010, the Office has been publishing Summaries of the Annual Reports, which stipulate all activities, initiatives, surveys, statistics and outlines of cases. The Summaries are available in English and such practice allows the wider public at the international level, to obtain the crucial information related to the gender equality promotion in the Croatian society.

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 for the Gender Equality had determined discrimination in 209 cases, 13 cases were reported to the competent State Attorney's Office in the connection with criminal offenses and one case in the connection with a misdemeanour act. The Ombudsperson for Gender Equality acted as an intervener in 3 court proceedings.

The Ombudsperson carried out 3 independent research projects: 2 related to the field of labour, working conditions and social security, 1 in the field of education and science. Additionally, 14 analyses were completed, 5 publications produced and 2 memoranda of cooperation were entered into; with the Ministry of Justice and with the Faculty of Law in Zagreb. In 2016, the Ombudsperson carried out 3 EU projects: The Dismantling of the Glass Labyrinth had been completed in 2016, a new EU project was initiated In Pursuit of Full Equality between Men and Women: Reconciliation of Professional and Family Life with implementation deadline set for the end of 2017. An additional project was approved in December; Building more effective protection: transforming the system for eliminating violence against women.

2.) The Office for Gender Equality of the Republic of Croatia

The Office for Gender Equality was established on 3 February 2004 pursuant to the Regulation of the Government of the Republic of Croatia ("Official Gazette", No. 18/04) as a professional body for the implementation of technical and administrative activities related to the enforcement of gender equality in the Republic of Croatia. The Office has operated since March 2004. The scope of work of the Office is set forth in the Regulation of the Government of the Republic of Croatia and Article 18(2) of the Gender Equality Act ("Official Gazette", No. 82/08). The Office is headed by the 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 Mission of the Office for Gender Equality is to perform technical tasks for the Government of the Republic of Croatia in order to coordinate all activities aimed at ensuring

gender equality in the society, develop an integrated system of protection and promotion of gender equality and monitor the implementation and efficiency of the Act on Gender Equality and the National Policy for Gender Equality.

The Office for Gender Equality submits reports to the Government of the Republic of Croatia every two years on the implementation of the National Policy for Gender Equality. The above mentioned National Policy for Gender Equality is a fundamental strategic policy document of the Republic of Croatia that has been passed with the purpose of eliminating discrimination against women and establishing true gender equality by implementing equal opportunities policy. The Office for Gender Equality engages in and maintains communication with the European Commission High Level Group on Gender Mainstreaming, the European Institute for Gender Equality and other international organisations.

3.) The Gender Equality Committee of the Croatian parliament

The Gender Equality Committee 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 of the Republic of Croatia, and in particular it:

1. promotes the signing of international documents on gender equality and monitors the implementation of these documents;
2. participates in the drafting, implementation and analysis of the implementation of the National Gender Equality Policy of the Republic of Croatia;
3. co-operates and introduces measures and activities to promote gender equality;
4. proposes packages of measures to eliminate gender-based discrimination;
5. promotes equal gender representation in the composition of the working bodies and delegations of the Parliament;
6. participates in the drafting of documents on integration activities of the Republic of Croatia through the amendment and adaptation of legislation and executive measures to achieve gender equality according to the standards applied in the legislation and programmes of the European Union;
7. prepares draft legislation and other regulations on gender quality;
8. undertakes efforts to introduce the principles of gender equality in education, healthcare, public information, social policy, employment, free enterprise, decision-making processes, family relations, etc.

4) Gender Equality Coordinators in public administration bodies

In line with the Act on Gender Equality, Directors of public administration bodies appoint an official or a civil servant in a managing position to carry out the duties and tasks of a Gender Equality Coordinator. The Coordinator, pursuant to the remit and the scope of activities of the public administration body, coordinates the implementation of the Act on Gender

Equality 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 Act on Gender Equality.

5) Gender Equality Coordinators in public administration offices

In line with the Act on Gender Equality, Directors of public administration bodies appoint an official or a civil servant in a managing position to carry out the duties and tasks of a Gender Equality Coordinator. The Coordinator, pursuant to the remit and the scope of activities of the public administration body, coordinates the implementation of the Act on Gender Equality 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 Act on Gender Equality.

Gender Equality Coordinators in public administration offices participate in the work of the County Gender Equality Commissions.

6) County/Local Gender Equality Commissions

In line with the Act on Gender Equality, bodies of local and regional self-government and the City of Zagreb 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 with the aim of promoting gender equality at a local level and implementing the Act on Gender Equality 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 constituted 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. In accordance with the National Policy for Gender Equality, the units of local self-government may establish city and municipal gender equality commissions.

Pursuant to the Article 18 of the Act on Gender Equality, the Office for Gender Equality of the Republic of Croatia, is in charge of coordinating the activities of the County Gender Equality Commissions. The Office is responsible for organising meetings of the Coordination of the County Gender Equality Commissions in order to improve and exchange information and best practice in the implementation of the gender equality policy on local levels.

7) The Labour Inspectorate

The Labour Inspectorate does not serve as an institutional mechanism for gender equality policies within the existing legislative framework. However, it does constitute an important role in achieving gender equality. The Labour Inspectorate is an administrative unit of the Ministry of Labour and Pension System. It employs a total of 236 civil servants, 125 women and 111 men.

The Labour Inspectorate submits annual reports on the activities carried out for each calendar year. The report includes numerical indicators on all inspection activities, conclusions on the current situation, and all advisory, administrative, civil and criminal measures taken in order to eliminate and suppress identified violations. Additionally, it provides an insight into the gender-based distribution of violations committed by employers.

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 dignity of workers, of which 2 pertained to women. Nine grievances pertained to discrimination (5 men, 4 women). The report concludes with a proposed set of improvement measures.

8) The Ombudsperson of the Republic of Croatia

The Ombudsperson of the Republic of Croatia 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 a term of 8 years.

The Ombudsperson is dedicated to a society in which human rights are respected, promoted and protected, in which the state administration is just, efficient and accessible and in which each individual enjoys the equality of opportunity. The Ombudsperson is independent in activities directed at the protection and promotion of human rights and fundamental freedoms, eliminating discrimination and the prevention of torture via the National

Preventive Mechanism. 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 the Republic of Croatia in last 25 years. The Report contains an analysis and evaluation of the state of protection of human rights and fundamental freedoms and includes 220 recommendations aimed at the elimination of the systemic irregularities noted. It also provides an estimate of the degree to which previous recommendations have been implemented by the competent bodies they were directed at. In 2016, there has been a 15% increase in the number of recorded cases compared to the previous year. 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 had filed 55.3% of grievances, while women filed 44.7% grievances. One grievance had been filed by a transgender person, while 3 grievances were submitted anonymously. Gender-based discrimination accounts for 10 grievances (2.6%) in the distribution of causes.

IV. Activities

A) The National Policy for Gender Equality 2011-2015

The National Policy for Gender Equality is a fundamental strategic policy document of the Republic of Croatia that has been passed with the purpose of eliminating discrimination against women and establishing true gender equality by implementing equal opportunities policy for the period 2011-2015. The policy of gender equality and the empowerment of women is one of the fundamental principles of the democratic and social order of the Republic of Croatia, and is accepted at the highest national level through the decisions of the Government of the Republic of Croatia and the Croatian Parliament, and through the adoption of the national strategic action plans in 1997, 2001 and 2006, which confirmed the obligations assumed with the ratification of the Beijing Declaration and the Platform for Action at the UN Fourth World Conference on Women held in Beijing in 1995. The National Policy for Gender Equality 2011 – 2015 builds on the preceding National Policy 2006 - 2010 (Official Gazette, No. 114/06) by redefining the national priorities, the modes of implementation and the special measures in line with the changing social and political circumstances, the progress achieved, and the further challenges in achieving true gender equality. It compiles the Republic of Croatia to integrate the gender dimension in all policy areas by implementing special measures with regard to the following seven key fields of action:

- 1) promotion of the human rights of women and gender equality;
- 2) creation of equal opportunities in the labour market;
- 3) improvement of gender sensitive education;
- 4) balanced participation of women and men in political and public decision-making processes;
- 5) elimination of all forms of violence against women
- 6) promotion of international cooperation and gender equality outside Croatia
- 7) further strengthening of the institutional mechanisms and implementation methods.

In the area of equal opportunities in the labour market, the activities are directed at reducing unemployment and elimination of all forms of discrimination against women in the labour market, empowering women entrepreneurship and introducing measures that promote the balancing of private and professional life. The Central Bureau of Statistics monitors the implementation of active employment measures by gender and releases monthly data in the Monthly Statistical Bulletin and yearly in the Yearbook of the Croatian Employment Service. The National Policy for Gender Equality provides for the continuous systematic activities that encourage units of local and regional self-government to engage in the implementation of national plans to promote employment and development of entrepreneurship. The Central Bureau of Statistics and the Croatian Employment Service systematically collect statistical data and indicators of gender-based differences within the labour market and the social security system. Croatian Employment Service, in cooperation

with non-governmental organizations, organizes training courses, seminars and educational programmes for women.

B) Strategy of Women Entrepreneurship Development in the Republic of Croatia 2014-2020

Strategy of Women Entrepreneurship Development in the Republic of Croatia 2014-2020 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 delivered reports allow to establish 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 changes in the value system, behaviour and the environment, factors that impact the women entrepreneurship, while medium-term objectives include the increase in the number of women entrepreneurs and women owners of expanding enterprises.

So as 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 women entrepreneurship to the overall institutional infrastructure and
- 4) Promotion of women entrepreneurship.

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. For instance, Measure 6 - Education and Training was developed as part of the implementation of Strategic Objective 2 - Improving systematic support to women entrepreneurship, and this measure includes:

- development of education and training programs for women entrepreneurs, focused on growth, business activities on the common EU market, innovation, new technologies and technology-intensive business ventures, with the defined outcomes of learning,

- development of education and training programs for cluster management and programming, as well as for software engineering (cluster management, manager of a cooperative, director of a business incubator, accelerator, technology park, etc.)

- development of new models of education, training and development of women preparing them for management positions in the sectors of ICT, new technologies, creative industries, the applied innovation, etc.

C) Labor market

The year 2016 was marked by positive economic trends in the Republic of Croatia. Compared to a moderate growth of 1.6 % recorded in 2015, a dynamic Gross Domestic Product growth of 2.9 % was achieved in 2016. The changes on the labour market refer primarily to a decrease in the number of unemployed persons and the rate of unemployment, as well as a slight increase in the number of employed persons¹². According to the Labour Force Survey, there were on average 1,590,000 employed and 240,000 unemployed persons in 2016. Compared to 2015, the number of employed persons increased by 0.3 %, while the number of unemployed persons decreased by as much as 21.6 %. The decreasing trend in registered unemployment continued for the third consecutive year. According to the data of the Croatian Employment Service, the number of persons with permanent employment contract increased by 6.6 % in 2016, for the first time after several years, whereas the number of those with fixed-term employment contract decreased by 5.5 %. In 2016, a total of 218,834 persons from the CES unemployment register were employed, of which: 197,047 on a work contract basis and 21,787 on the basis of other business activities (workplace training without a work contract, starting a company, craft or trade business, etc). Of the total number of employed persons, 106,282 were women and 90,765 were men.

The Croatian Employment Service is a public institution owned by the Republic of Croatia, established under the Act on Employment Mediation and Unemployment Entitlements¹³, with the task of resolving employment and unemployment related issues in the broadest sense of the terms. As of 31st December 2016, the Croatian Employment Service had 1,535 workers, of which 1,226 women (79.9 %) and 309 men (20.1 %).

In 2016, a total of 70,728 persons participated in the measures envisaged under the Active Labour Market Policy, within the scope of responsibility of the Croatian Employment Service, i.e. representing 9.2 % participants more than in 2015. In 2016, there were 37,707 new entrants who started using some of the active labour market measures. In terms of participant structure, women accounted for a slightly larger share (59,6%) compared to men (40,4%).

Of all projects on the labour market, one program should be emphasized in particular, and that is 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, as well as with the guidelines for employment policies in EU member states promoting social inclusion and combating poverty, in particular owing to the fact that women in unfavourable position on the labour

¹² 2016 Yearbook of Croatian Employment Service

¹³ Official Gazette No. 16/17

market will participate in these activities, and they will care for elderly persons and persons in unfavourable position. The project is to be implemented by units of local self-government and associations, within a period of 30 months. The aim of the program is to create jobs for women in unfavourable position on the labour market, with a special focus on women over the age of 50, women with secondary school qualifications as their highest education attainment, women with disability, women who are victims of human trafficking, recovering addicts, women who are victims of domestic violence, and women 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 projects 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 Croatia average.

Earnings

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 2015¹⁴. The average gross earnings of persons in employment in legal entities in the Republic of Croatia who worked for all 12 months of 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.

In some 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 greater interest to work in economic activities with lower salaries (education, service sector, care sector, public administration) whereas they are under-represented in economic activities with higher salaries (IT sector, transport).

The greatest economic crisis in the Republic of Croatia 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 employing more men¹⁵.

They were published in a release no. 9.1.4 of 23 May 2017: https://www.dzs.hr/Hrv_Eng/publication/2017/09-01-04_01_2017.htm

¹⁵Data from the web site: <http://trzisterada.hzz.hr/Employment/YearGender>

V. Conclusion

Given the fact that the response to the complaint provides a detailed and comprehensive overview of the legislative and institutional framework of the Republic of Croatia which ensures gender equality and seeks to create favourable legislative and social context for under-represented gender on the labour market, we maintain that the complaint has no merits.

The complaint alleges that regulations in the Republic of Croatia are outdated and ineffective. The complaint has failed to provide specific examples of such regulations or provisions. However, having regard to the observations submitted in a response to the complaint, it is clear that the Republic of Croatia has adopted detailed and comprehensive legal framework to regulate gender equality, prevent discrimination and protect rights arising from the employment relationship. Article 4 of the Act on Gender Equality explicitly states that this 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 communautaire* of the European Community, 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. It should be noted that this Article explicitly mentions the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the European Convention for the Protection of Human Rights and Fundamental Freedoms as these documents are of great importance at the international, regional and national level.

Furthermore, the complaint alleges that national reports are submitted by every individual country separately, consequently, the reports are subjective and open to interpretation. We contend that the complaint has failed to provide the specific instances where the Republic of Croatia engaged in prejudiced or subjective reporting to the Council of Europe. Conversely, the Republic of Croatia has submitted complete and accurate data collected by the competent state authorities that are responsible for the collection of statistical data. Some of the collected data had also been used by the University Women of Europe in its case argumentation. Therefore, we disprove the claim that the data have not been made available in English or French. We contend that most of the reports or statistical data are fully or partially (in summary form) translated into English. They are available on official websites of all state bodies that participate in activities related to gender equality.

Therefore, the complainant has failed to provide in which respect the Republic of Croatia has been violating the provisions of the European Social Charter and the Additional Protocol to the European Social Charter. The complaint has failed to provide specifically which acts or parts thereof, pertaining to equal opportunities rights and conditions of employment with regard to gender non-discrimination, have not complied with the European Social Charter. The complaint has failed to demonstrate that the Republic of Croatia has failed to implement

statutory procedures accurately and efficiently. The complaint has failed to submit evidence to support the claim that the Republic of Croatia has not complied with the provisions of the European Social Charter and the Additional Protocol to the Charter from 1988.

Conversely, the Republic of Croatia has provided a detailed description of the legislative framework that provides for equal opportunities and conditions with regard to gender-based discrimination in employment (the Labour Act, the Croatian Anti-Discrimination Act and the Act on the Gender Equality). The institutional framework for the implementation of the above mentioned legislation is provided (the Ombudsperson for Gender Equality, the Office for Gender Equality of the Government of the Republic of Croatia, the Gender Equality Committee of the Croatian Parliament, Gender Equality Coordinators at the public administration bodies, Gender Equality Coordinators at public administrations offices and County/Local Gender Equality Commissions).

The Republic of Croatia has established a legislative and institutional framework and a statistical data collection system that enables the collection of key data in the labour market which pertain to the implementation of national policies and measures. Strategies to address and eliminate the under-representation of a single gender in the labour market and possible indirect discriminatory practices have been introduced (the National Policy for Gender Equality of the Republic of Croatia and the Strategy of Women Entrepreneurship Development of the Republic of Croatia 2014-2020). Regular reports on implementation and enforcement of the above-mentioned strategies have been delivered. The annual reports submitted by the Ombudsperson for Gender Equality and the Ombudsperson of the Republic of Croatia include sets of proposed measures, indicate issues and identify previous recommendations that have been adopted. In conclusion, the issues of equal pay have been addressed in a critical and systematic manner.

Therefore, we deem that the complaint filed with the European Committee of Social Rights should not be declared admissible as it is not substantiated.

With respect to the request for the compensation for costs incurred we deem the request not substantiated and should not be declared admissible.