



**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. Cyprus

Complaint No. 127/2016

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
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Raul CANOSA USERA
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Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 3 July 2019, 12 September 2019, 16 and 17 October 2019, 3, 4 and 5 December 2019,

On the basis of the report presented by Krassimira SREDKOVA,

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 Cyprus is in violation of Articles 1, 20 and E of the Revised European Social Charter ("the 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 Cyprus.
3. On 4 July 2017, referring to Article 6 of the 1995 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 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) 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. The Government's submissions on the merits were registered on 13 October 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 21 December 2017. On 17 October 2017, UWE asked for an extension of the deadline for presenting its response. The President of the Committee extended this deadline until 12 January 2018. UWE's response was registered on 11 January 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 15 March 2018. On 27 February 2018, the Government asked for an extension of the deadline for presenting its further response. The President of the Committee extended this deadline until 16 April 2018. The Government's further response was registered on 13 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. EQUINET's observations were registered on 30 March 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 Cyprus constitutes a violation of Articles 1, 20 as well as Article E on the following grounds:

- Firstly, the pay gap between women and men still persists. Unequal pay is a reality, despite the international obligations entered into and the domestic legislation enacted.
- Secondly, only very small number of women occupy decision-making positions within private companies, since there are no effective legislative measures to ensure the sufficient representation of women in decision-making bodies within private enterprises.

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 find the allegations of UWE manifestly ill-founded.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics, 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, where the gender pay gap is probably even higher).

17. The ETUC further 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 in 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 20 of the Charter 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 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 20.

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 Cyprus, ETUC considers that despite the existing regulatory framework concerning equal pay, there still exists a gender pay gap. Moreover, there exists no regulatory framework on representation of women in decision-making positions in private enterprises.

24. According to the ETUC, the fact that a phenomenon is prohibited does not, however, automatically mean that it ceases or disappears. Pay discrimination between women and men still exists despite the fact that it is prohibited and that there are a number of tools both in legislation and collective agreements that are intended to even out pay differences. From a substantive perspective, the ETUC believes that there are elements which should (at least in combination) lead to a violation of Article 20, such as the existence of the pay gap (statistical evidence) and the fact that the official statistics are still excluding small (micro) sized enterprises, which makes it most probable that the gender pay gap is even higher in these enterprises.

25. As regards a procedural perspective (i.e. a general framework to ensure a satisfactory application and enforcement/supervision of the principle of equal pay), the result of eliminating the gender pay gap is not yet fully achieved. From the point of view of the ETUC this illustrates that there still is a violation of Article 20 of the Charter also from the procedural perspective.

26. Concerning the under-representation of women in decision-making positions within private companies this problem has only been addressed in more recent years. As regards substance, statistical evidence shows that there is still an underrepresentation of women in decision-making bodies within private companies. Even if there might be 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 20 of the Charter from the substantive perspective.

27. As regards procedure, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decision-making bodies within private enterprises. In practice, there is even less supervision and enforcement. From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

OTHER OBSERVATIONS

A – The European Union

28. 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.

29. 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)³, the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

30. 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.

31. 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

32. 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.

33. 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.

34. 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 into account.

B – European Network of Equality Bodies (EQUINET)

35. In its observations EQUINET states that the Office of the Commissioner for Administration and Human Rights (the Commissioner) is an institution of extra judicial control but not a quasi-judicial body. Therefore, it cannot bring cases before the Cyprus courts or any court. After the transposition of the EU Directives into national laws, the Commissioner was assigned to act also as the Equality Body.

36. As the Equality Body, the Commissioner, examines complaints related to discrimination on the basis of The Combating of Racial and other forms of Discrimination Law (L. 42(I)/2004). However, gender is not included in the L.42(I)/2014.

37. Nevertheless, the competences to combat discrimination on the ground of gender are provided by the Equal Treatment of Men and Women in Employment and Vocational Training Law (L.205(I)/2002). This Law provides a framework for equal treatment of men and women. The provisions cover any discrimination based on sex (including sexual harassment and harassment) and protects mothers from facing discrimination due to pregnancy, childbirth, nursing, maternity or sickness due to pregnancy or childbirth.

38. The Commissioner's competences relating to equal pay are only limited to the investigation of complaints. The Law L. 177(I)/2002 on Equal Pay of Men and Women for Equal Work or Work of Equal Pay Law provides the legal basis to investigate the complaints in accordance to the Combating of Racial and other forms of Discrimination Law. EQUINET also states that the Law L. 177(I)/2002 has no provisions for any ex officio interventions, any promotion functions (e.g. campaigns or publications) or any other actions to promote equal pay between women and men.

39. The Commissioner may advise and assist the government, the parliament and other relevant stakeholders on any matter related to the promotion and protection of human rights. Besides complaint handling, the Commissioner carries out advisory functions (e.g. participation in the parliamentary committees' discussions), monitoring functions (submitting concrete recommendations and suggestions to the authorities), public education (e.g. raising awareness on human rights issues, publications) and promotion functions.

40. According to EQUINET, in the last eight years, only two complaints were submitted concerning the violation of the right to equal pay. Submitted in 2011, the first complaint claimed that the salary terms differed between women and men at the Cyprus Broadcasting Corporation. The Commissioner, after initiating the investigation, decided to refer the case to the Labour Inspectorates to proceed with the comparative assessment of work (as provided in the national legislation).

41. Submitted in 2012, the second complaint claimed unequal pay between employees of two different departments (radiodiagnostic and radiotherapy sections) of the Bank of Cyprus Oncology Centre. After investigation of the complaint, it was found that the unequal pay was not related to the gender of employees but it was based on the employment schemes of the positions of each section.

RELEVANT DOMESTIC LAW

42. Law No. 177(I)/2002 on equal pay for men and women for similar work or work of equal value, amending Law No. 193(I)/2004, transposed the relevant provisions of the Recast Directive. The following provisions are relevant:

43. In Article 2 of the Law as amended, the definition of direct discrimination is the same as that in Article 2 of Directives 2002/73/EC and 2006/54/EC. Article 2 as amended also defines “pay” as the usual basic contribution and any other additional contributions paid directly or indirectly, either in money or in kind, by the employer to the employee in exchange for work provided. Article 3 of Law No. 177(I)/2002 provides that the purpose of this law is to ensure that the principle of equal pay between men and women for the same work or for work of equal value is applied.

Article 2

“direct sex discrimination” means unfair treatment, directly and clearly related to a person’s sex;

pay” includes the usual basic contribute on and any other additional contributions paid directly or indirectly, either in money or in kind, by the employer to the employee, in exchange for work provided;

“employment” means the paid provision of work or services based on a personal contract of employment, an employment or apprenticeship relationship or other personal contract or relationship under private or public law, in any sector or branch of economic activity, private or public, including the Public Service, the Judicial Service, the Public Education Service, the Local Authorities, the legal persons or the organisations governed by public or private law, the Armed Forces and the Security Forces. “

Article 3

“The purpose of this Law is to ensure that the principle of equal pay between men and women for equal work or equal value work is applied.”

44. Article 5 of Law No. 177(I)/2002 as amended provides that any discrimination on grounds of sex is prohibited, with regards to all terms and conditions of pay for the same work or for work of equal value. Under Article 5 (1) and (2), every employer must provide equal pay to men and women for the same work or for work to which equal value is attributed, irrespective of the sex of the employee. Further, where a system of professional classification is used for the determination of pay, such a system must be designed in such a manner to ensure the exclusion of sex discrimination.

Article 5

“(1) Every employer must provide equal pay to men and women for the same work or for work to which equal value is attributed, irrespective of the sex of the employee.

(2) Without prejudice to the generality of subsection of this section, in particular, where a system of professional classification is used for the determination of pay, such a system must be based

on common criteria for male and female employees, and must be designed in such a manner that discrimination based on sex is excluded.

(3) The comparison between employees shall be made with reference to employees who are employed or were employed by the same employer, or in a business controlling the employer during the last previous or following years.”

Article 7

“(1)(a) Any existing legislative provision, which is contrary to the provisions of this Law, shall be repealed at the part where it directly or indirectly discriminates against one sex.

(b) If the discrimination referred to in paragraph (a) of this subsection regards the granting of a right or other benefit only to persons of one sex, such right or benefit shall be extended by right, to persons of the other sex.

(2) The competent authority may revoke or amend accordingly any individual or regulatory administrative action that is contrary to the provisions of this Law.”

Article 10

“The Minister shall be responsible for the application of this Law. He shall appoint the Inspectors necessary for the effective application of the provisions of this Law or other officers, who shall carry out the powers and duties provided for in section 11, 12 and 13 of this Law.”

Article 11

“The major task of the Inspectors shall be

(a) To ensure the full and effective application of the provisions of this Law, either by carrying out investigation on their own volition for the control of the application thereof, or by examining complaints submitted for violations of this Law;

(b) to provide information, advice and suggestions to employers and employees as regards more effective ways to comply with the provisions of this Law;

(c) report problems to the Minister, arising from the application of this Law and submit recommendations concerning measures that may be taken to tackle them.”

45. The power of the Labour Inspectors is defined in Article 12 of the Law and in Article 13 the actions that Inspectors should take when a complaint is submitted are stated.

Article 13

“(a) In exercise of the powers conferred upon him/her by this Law, he/she shall investigate the complaints using a fruitful manner and in particular he/she shall call the person against whom the complaint has been made, any other person referred to in section 14 of this Law, and any other person responsible for the complaints, to provide information, clarifications or any evidence he/she may have or control which help or facilitate the investigation of the complaints and attempts to settle the dispute;

(...)

(c) If the dispute is not settled, the dispute shall be forwarded to the Committee ex officio or through a request of any of the interested parties;”

46. The Commissioner's competences arise from Article 23A of the legislation regarding extrajudicial protection and the burden of proof. According to this Article, any person who believes that he/she has been offended by a contravention of the Law, may submit a complaint to the Commissioner, who has the authority to investigate the said complaint in accordance with the Combating of Racial and other Forms of Discrimination Law. The law also states that if a person who considers that there was a violation of the law and can establish facts from which it may be presumed that there has been discrimination, then the Commissioner can oblige the respondent to prove that there has been no violation.

47. Article 2 of Law No. 205(I)/2002 the Equal Treatment of Men and Women in Employment and Vocational Training Law defines positive action as measures which, for the purposes of ensuring full and substantial equality between men and women in professional life., The measures provide specific advantages for the underrepresented sex in posts or levels of occupational hierarchy or sectors of vocational training, and especially for women, and include measures that prevent or balance the disadvantages of the professional life of such persons.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

48. The Committee of Ministers adopted several recommendations, such as Recommendation No. Rec(1985)2 on legal protection against sex discrimination, in which it 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 No. 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(98)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.

49. More recently, in its Recommendation CM/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)

50. 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.

51. 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.

52. 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.

53. 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)

54. 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.”

55. 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

56. 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.”

57. 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.

58. 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

59. 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 in decision-making boards in enterprises

60. 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)²⁹; 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

61. 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)

62. 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:

63. 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

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

65. 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.”

66. 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. [...]”

67. 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

68. 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.”

69. 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).

70. 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.

71. 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

72. 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.

73. 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.”

74. 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

75. 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

76. 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.

77. 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, EU:C:1981:80, Jenkins, paragraph 22); C-237/85, EU:C:1986:277, Rummler, paragraph 11; C-17/05, EU:C:2006:633, Cadman, paragraphs 27-29).

78. 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 Jenkins, op. cit. paragraphs 14 and 15; C-285/02, EU:C:2004:320, Elsner-Lakeberg, paragraph 12; Cadman, op. cit., paragraph 30).

79. 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, EU:C:2001:358, Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93, EU:C:1995:155, Royal Copenhagen paragraph 45) or pay provided on a voluntary basis (4557/93, EU:C:1996:33, Lewark paragraph 21.). 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 (Lawrence, C-320/00, EU:C:2002:498, paragraph 18 ; Allonby, C-256/01, EU:C:2004:18, paragraph 46).

80. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, Barber, C-262/88, EU:C:1990:209, point 12 ; Bilka-Kaufhaus, 170/84, EU:C:1986:204, paragraph 15 ; Seymour-Smith, C-167/97, EU:C:1999:60, paragraph 23 ; Garland, 12/81, EU:C:1982:44, paragraph 5 ; Brunnhofer, *op. cit.*, 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 (Gillespie, C-324/93, EU:C:1996:46, paragraph 13 ; Bötzel, C-360/90, EU:C:1992:246, paragraph 15 ; Rinner-Kühn, 171/88, EU:C:1989:328, paragraph 7). The concept of pay does not include statutory social security benefits (Defrenne, 80/70, EU:C:1971:55, paragraph 7).

81. 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 Macarthys, 129/79, EU:C:1980:103, paragraph 11 ; Rummler, *op. cit.* , paragraphs 13 et 23 ; Brunnhofer, *op. cit.*, 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, *op.cit.*, paragraphs 32 and 33).

82. 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, *op. cit.*, paragraph 13).

83. 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).

84. 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, C-271/91, UE:C:1993:335, paragraph 22 et Paquay, C-460/06, EU:C:2007:601, 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, von Colson et Kamann, 14/83, UE:C:1984:153, paragraphs 23 et 24 ; Draehmpaehl, C-180/95, EU:C:1997:208, paragraph 25 ; Paquay, C-460/06, EU:C:2007:601, paragraph 45).

85. 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, *op. cit.*, paragraph 53).

86. 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, *op. cit.*, paragraph 26 ; Paquay, *op. cit.*, paragraph 46 ; Camacho, C-407/14, EU:C:2015:831, paragraph 33).

87. 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 (Levez, C-326/96, EU:C:1998:577, paragraph 34). 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, *op. cit.*, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

88. 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.

89. 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)).

90. Article 20 of the Charter (and Article 1 of the 1988 Additional Protocol) 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, 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.

91. All the States Parties to the Charter having accepted Articles 4§3 and/or 20 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).

92. The Committee notes that UWE invokes both Article 1 and 4§3 of the Charter, but it also notes that Cyprus has not accepted to be bound by Article 4§3. It considers that in accordance with its well-established case law the assessment in substance is more appropriate under Article 20 of the Charter. As regards Article E, which is also invoked by UWE, it is clear from the very wording of Article 20 of the Charter that its scope includes the prohibition of discrimination. The Committee therefore considers that it is not necessary to examine whether there has been a violation of Article E in conjunction with Article 20 of the Charter.

93. 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.

94. 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 the supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality).

95. 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).

96. 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 arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

97. 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

98. 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 20.c of the Charter. 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 20.c of the Charter. 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 20.d of the Charter, 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 20.C OF THE CHARTER AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

99. Article 20.c of the Charter reads as follows:

Article 20 – 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

100. According to UWE, the fact that a set of relatively formal legal documents prohibit gender discrimination and provide that equal treatment must be ensured in practice, does not mean that the relevant provisions are actually implemented. The legislation must produce sufficient effects, through appropriate monitoring and administrative supervision mechanisms that are reasonably regular and effective, which is not the case in Cyprus.

Effective remedies

101. UWE states that despite the fact that the Equality Committee provides free of charge independent assistance (legal aid) to the victims of discrimination on the grounds of sex, covering the costs for legal proceedings, in order for them to present their case before the court and claim damages, there have only been 16 cases since the Equality Committee has been active.

102. Furthermore, UWE considers that there remains a final obstacle, which is the limitation period that applies in the area of pay disputes, which can be somewhat short when a woman has been discriminated against over a long career, meaning that any back pay will be limited. Therefore, embarking on such proceedings is an extremely hazardous process, producing a very uncertain result.

Job comparisons and pay transparency

103. UWE claims that the Government does not provide any information about the component elements or characteristics of job evaluation/classification systems or the pay gap calculation method for firms.

104. According to UWE, the assessment base must not just be an individual company but must be extended to entities forming a working environment or a technical unit for a group of workers employed by several companies. UWE assumes that the Government is not aware of the concept of technical unit and nothing is said about checks on the implementation of company reports. Likewise, according to UWE, the size of companies is a key assessment criterion and a whole range of issues is still to be addressed by many companies not covered by the legal provisions on equal pay.

Equality bodies and other institutions

105. UWE contends that the information provided by the Government merely takes the form of a description of the legal and institutional framework and there is a general lack of clarifications which could serve to determine whether the policies followed conform to the requirements of the Charter. In particular, it is not possible to assess whether supervisory bodies have sufficient powers and funding, whether judicial regulations are efficient, what is the scale of awareness-raising policies and the relevance and accuracy of the figures and statistics supplied.

106. According to UWE, the 2004 legislation grants the Commissioner for Administration (Ombudsman) extended powers to combat and eliminate discrimination in the private and public sectors. However, according to UWE so far combating unequal pay for the same work does not appear to be the Commissioner's priority.

107. In addition, UWE notes from the Government's submissions that only two complaints have been submitted to the Office of the Commissioner since 2010 and both have been dealt with within the remit of the Ombudsman's mandate. However, the Ombudsman is not mandated to act on his own accord in investigations relating to equal pay between women and men for the same work or work of equal value. In this connection, UWE considers that two complaints submitted in seven years do not prove that the system is effective.

108. UWE refers to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus 2018, according to which the limited resources allocated to the Equality Body has led to delays in investigation of complaints of up to three to four years. Moreover, no binding decision was ever issued by the Equality Body and no sanction has ever been imposed. In the majority of cases, the equality body prefers to use its mediation function, as sanctions are too low to act as a deterrent.

109. Moreover, UWE contends that there is a lack of evaluation of the action taken, and the Government's submissions provide no clarification. More precisely, the Government does not provide any information about the number of appeals that have been made concerning wage discrimination, the number of investigations that have been conducted in companies or whether the Ombudsman has taken action concerning specific issues.

110. Therefore, UWE claims that the effectiveness of the measures implemented is limited. The additional functions assigned to the Equality Body without an increase in its budget has led to considerable delays in decision-making to the extent that the effectiveness and impact of the institution is now in question. The freezing in recruitments to the public sector imposed as a result of the economic crisis has meant that it cannot hire personnel even if only to replace those who resign from the service. Many of the officers of the Equality Body are not legally trained, which is reflected in the reports published.

111. As regards the General Labour Inspectorate, UWE also claims that equal pay does not appear to be one of the Inspectorate's concerns.

2. The respondent Government

Recognition of the right to equal pay in legislation

112. The Government states that the legislation on Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed (No.177(1)/2002) and on the Protection of Wages (No.35(1)/2007), have been in place for several years. According to the Government, the right to work for both men and women on equal terms and conditions is guaranteed through the relevant legislation.

113. The Government asserts that the legislation provides that employers are obliged to promote the equal pay principle in a planned and systematic way in the workplace. With this aim in view, employers are encouraged to provide at least once a year, or at intervals agreed between them and their employees' representatives, appropriate information on equal pay between men and women. Such information may include an overview of the proportion of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.

114. The Government further states that according to the provisions of the legislation on equal pay, social partners are obliged to engage in social dialogue with a view to fostering equal pay between men and women. This can be carried out through the monitoring, for example, of practices in the workplace, collective agreements, codes of conduct, encouraging research or exchange of experience and good practice, and by concluding agreements laying down antidiscrimination rules as regards pay, in line with the provisions of the legislation. The Government states that because of the liberal and voluntary nature of the Cypriot industrial relations system, measures for fulfilling the above-mentioned obligation have not been strictly defined in the legislation.

Effective remedies

115. According to the Government, the legislation provides for reversal of the burden of proof, in both judicial and extra-judicial proceedings. Specifically, the legislation stipulates that in any judicial proceedings (except criminal proceedings) the plaintiff who alleges to have been prejudiced by the contravention of the legislative provisions, shall present real facts which substantiate the contravention. The Court shall then oblige the adverse party to prove that there has been no contravention of the Law. Regarding the extra-judicial protection, the legislation provides that when a complaint is submitted to the Ombudsman, and given that the complainant presents real facts which substantiate the contravention, the Ombudsman shall oblige the person against whom the complaint is directed to prove that there has been no contravention of the Law.

116. The Government further contends that UWE's allegation that female workers are at considerable risk of being dismissed, if they demand equal pay for equal work is unsubstantiated. The legislation specifically provides that no person shall be dismissed or subjected to less favourable treatment by his/her employer for having submitted a complaint or contributed to the prosecution of an offender. An employer who does not comply with the law is guilty of an offence and liable to a fine.

117. The Government also indicates that the Labour Disputes Tribunal has jurisdiction to adjudicate disputes arising from various laws, inter alia, the Termination of Employment Law, No. 24/1967, the Equal Pay between Men and Women for the Same Work or for Work to Which Equal Value is Attributed, Law No. 177(I)/2002 and Equal Treatment in Employment and Work Law, No. 58(I)/2004. By virtue of Law 24/1967, the competence of the Labour Disputes Tribunal to award damages arising from the implementation of this law is restricted to earnings of two years. However, Article 30 (2) of the same law provides that the employee may have recourse to the District Court for adjudication and compensatory award if the damages claimed exceed

the amount of damages the Labour Disputes Tribunal is allowed to award by virtue of Law No. 24/1967.

118. As for Law No.177(I)/2002 and Law No.58(I)/2004, they do not restrict the Labour Disputes Tribunal from awarding the damages that it deems just, in light of the circumstances of the case. In this respect, Article 22(3) of Law No.177(I)/2002 states that the Labor Disputes Tribunal grants just and reasonable compensation, which covers at least all the positive damage, compensation for any non-pecuniary damage plus legal interest. Similarly, Article 12(3) of Law No. 58(I)/2004 provides that the Labour Disputes Tribunal grants just and reasonable compensation which covers at least all the positive damage, plus legal interest.

119. In addition to the above statutory remedies, the Government states that it was established by case law in 2001 that the violation of human rights is an actionable right which can be pursued in civil courts against those perpetrating the violation, for recovering from them, *inter-alia*, just and reasonable compensation for pecuniary and non-pecuniary damage suffered as a result. Therefore a person who, is discriminated against, whether directly or indirectly, in the enjoyment of human rights and freedoms guaranteed by the Constitution can sue the state or private persons for damages and/or other appropriate civil law remedies, for violating his/her constitutional right (under Article 28, prohibition of discrimination) to enjoy the above rights and freedoms without such discrimination.

120. Regarding UWE's comment on the cost of proceedings, Article 23(2) of Law No.205(I)/2002 on Equal Treatment of Men and Women in Employment and Occupation, stipulates that the Equality Committee provides free of charge independent assistance (legal aid) to the victims of discrimination on the grounds of sex. Coverage of the legal proceedings costs enables them to present their case before the court and claim damages. The Committee has provided legal aid in 16 cases since it has been active.

121. As regard extra-judicial protection, the Cyprus Employers and Industrialists Federation (OEB), together with other social partners, has undertaken significant initiatives over the years, with the aim to achieve real gender equality. This includes reviewing Collective Agreements to eliminate provisions deemed to be discriminatory to one sex, carrying out information campaigns and reaching out to employers to raise awareness of their obligations, as well as organising systematic training programmes for business representatives. They also issued several publications, including but not limited to "A Code on the Prevention of Sexual Harassment in the Workplace", "Guide for the Promotion of Equality and Diversity in the Workplace-For Employers" and a "Guide on Work-Life Balance".

Pay transparency and job comparisons

122. The Government indicates that several relevant amendments were put in force. The amendments include granting authorisation for the Ombudsman to investigate relevant complaints, ensuring the harmonisation with EU Directive 2006/54/EC, and extending the possibility of job comparisons outside the company directly concerned, in unequal pay claims.

123. The Government further maintains that granting an employee access to a colleague's contract or pay slip, would most likely be in violation of the national Legislation and the relevant EU Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data. According to the Government, even the suggested measures in the European Commission Recommendation 2014/124/EU on "strengthening the principle of equal pay between men and women through transparency", are confined to the obligation of providing, upon request, information on pay levels by gender, the obligation of issuing average/median pay level reports, pay auditing, etc.

Equality bodies and other institutions

The Office of the Commissioner for Administration (Ombudsman)

124. With reference to UWE's allegation that the Ombudsman has failed to fulfill the task of fighting discrimination, the Government states that since 2010, two complaints have been submitted to the Ombudsman's office and both have been dealt with, within the remit of the Ombudsman's mandate. The Ombudsman is not mandated to act on his own accord in investigations relating to the equal pay between women and men for the same work or for work of equal value.

125. The Government also submits the complementary reply to UWE's observations from the Commissioner for Administration and the Protection of Human Rights. The Commissioner, albeit being appointed by the President, on the recommendation of the Council of Ministers and with the prior consent of the majority of the House of Representatives, is an Independent Officer and, as such, according to the relevant legislation, he/she is not accountable either to the Government, the Parliament or any other public authority or body. He/she does not receive any instructions in the exercising of his/her powers. His/her only responsibility towards the Government is, according to the relevant Law, to inform the President of the Republic, the Council of Ministers and the Parliament about its activities, through an annual report. Also, a monthly memorandum in summary form is communicated to the Council of Ministers and the Parliament, referring to each report submitted.

126. As a member of EQUINET, the Commissioner has contributed to the preparation of the Handbook on Equal Pay (2016). The Commissioner admits that their experience on unequal pay cases is limited. However, UWE's statement that as the Equality Body, the Commissioner does not work efficiently, independently and effectively for the promotion of equality and non-discrimination, is, according to the Commissioner, unsubstantiated.

127. The Government underlines that the Commissioner's recommendations on discrimination issues are binding, (unlike recommendations regarding maladministration that are non-binding – according to Law No. 3/1991). Nonetheless, the Commissioner uses the mediation function, which is a unique tool that allows him/her to come close to the competent bodies/authorities and, through constructive discussions, achieve compliance with his/her recommendations and opinions, without necessarily needing the submission of a report. This mediation function was introduced following a recent amendment of Law No. 3/1991 and it is considered an additional tool which enhances the Commissioner's effectiveness, as it renders the authorities accountable for non-compliance.

128. In 2014, the Supreme Court confirmed that where the Commissioner (acting as Equality Body) recommends specific measures according to the Combating of Racial and other forms of Discrimination (Commissioner) Law and the Equal Treatment of Men and Women in Employment and Vocational Training law, the Attorney General does not possess the power to reject or ignore those recommendations. Where the Commissioner recommends and informs the Attorney General about the amendment of legislation, due to the fact that the application of a provision leads to discriminatory treatment, then, the Attorney General should proceed to inform the competent authority for further actions.

129. In terms of numbers, since 2004, the Commissioner has investigated 481 complaints regarding gender discrimination in employment. During this period, the Office has issued 80 reports and interventions, through which recommendations were made to public authorities and private companies. The Commissioner cannot bring any claim before the Court.

The Labour Inspectorate

130. In response to UWE's allegation that the Government has made the political choice to not assign responsibility to the inspectorate for monitoring breaches of the principle of equal pay, the Government indicates that UWE's allegation refers solely to the work of the Health and Safety Inspectorate, which handles legislation related only to technical health and safety issues. The Labour Inspectorate which is the competent mechanism for monitoring the enforcement of the labour legislation, including equal pay, has not even been mentioned by UWE. In fact, according to the Government, the Labour Relations Inspectorate is the competent mechanism for inspecting the enforcement of more than 25 legal acts involving terms and conditions of employment. This includes protection of wages, information of employees, organisation of working time, part-time and fixed-term work, equal pay, parental leave, collective redundancies, transfer of undertakings, works councils and others.

131. According to the Government, whilst the Labour Inspectorate committed to the annual target of 200 inspections, it has actually carried out 1,440 inspections on equal pay so far. Reports are prepared for every investigation, allowing for follow up and further action, if needed. Regarding the Inspector's powers and duties, Law No. 177(I)/2002 provides that Inspectors appointed by the Minister of Labour, Welfare and Social Insurance, may either carry out an ex officio investigation or examine complaints for infringement of legal provisions. For this purpose, Article 12 of the Law provides that inspectors possess the necessary powers to enter any premises to inspect and collect information and documents. They can also conduct interrogations, including the contribution of any public authority, in order to effectively carry out their duties. Moreover, the inspector has the powers to require the presentation of any book, record, certificate or any other document or information that he/she may deem necessary for the purpose of investigating the application of the provisions of the Law in order to inspect and examine them and take copies either in whole or in part.

B – Assessment of the Committee

The recognition of the right to equal pay in legislation

132. The Committee recalls that under Article 20.c of the Charter (and 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.

133. 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.

134. 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.

135. 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).

136. As regards Cyprus, the Committee observes that Article 5 of Law No. 177(I)/2002 stipulates the right to equal pay for work of equal value, irrespective of gender. It also provides that, when a professional classification system is used for the determination of remuneration, such a system must be based on criteria common to male and female workers and must be designed to exclude any discrimination based on gender. In accordance with Article 7 of the Law, any existing legislative provision contrary to the provisions of this law shall be repealed if it is discriminatory directly or indirectly as regards gender.

137. In view of the above, the Committee considers that the obligation to recognise the right to equal pay for work of equal value has been satisfied.

Effective remedies

138. 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.

139. 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.

140. 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).

141. 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.

142. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus 2018 that access to courts is safeguarded for alleged victims of gender discrimination. Anti-discrimination/gender equality interest groups may introduce cases before courts on pay discrimination. Law No. 24/1967 stipulates that the applicant must submit his/her application to the Industrial Disputes Tribunal no later than one year after the relevant event. The Committee also notes that the Gender Equality Committee in Employment and Vocational Training of the Ministry of Labour, Welfare and Social Insurance

provides free of charge independent assistance (legal aid) to victims. The Committee notes that the Equality Committee has dealt with 16 cases of gender discrimination.

143. The Committee also notes from the submissions of the Government that Cypriot law provides for a shift of the burden of proof. Furthermore, it provides that no person shall be dismissed or be subject to less favourable treatment for having claimed equal rights.

144. As regards compensation, the Committee notes that by virtue of Law No. 24/1967, the Industrial Disputes Tribunal may award damages up to the amount of two years' wages. However, the worker concerned may have recourse to the District Court if damages claimed are higher than those awarded by the Industrial Disputes Tribunal.

145. The Committee also notes from the above-mentioned Country Report that under Article 22(2) of Law No. 177(I)/2002 as amended, if the conditions for a fair and reasonable compensation are fulfilled, the competent District Court shall award the beneficiary whichever of the following two amounts is greater:

- the fair and reasonable compensation awarded under paragraph 6 of Article 146 of the Constitution; or
- the total real damage and pecuniary satisfaction for any moral damage of the claimant caused by the decision, action or omission, which was declared void in accordance with Article 146 paragraph 4 of the Constitution.

146. Furthermore, Article 22(3) of the Law No. 177(I)/2002 provides that the Industrial Disputes Tribunal awards a fair and reasonable compensation, covering most of the assessed damage and includes the pecuniary satisfaction for any moral damage caused to the claimant by the offender. As regards sanctions, Article 24(I) provides that whoever intentionally contravenes the provisions of Article 5, which prohibits any gender discrimination on equal pay terms for the same work or for work to which equal value is attributed, shall be guilty of an offence and be punished with a fine not exceeding € 6,860.74 (CYP 4,000) or by imprisonment not exceeding six months or with both such penalties.

147. In view of the above, the Committee considers that the obligation to ensure access to effective remedies in case of gender pay discrimination has been satisfied.

Pay transparency and job comparisons

148. 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.

149. 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.

150. 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).

151. 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.

152. 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.

153. As regards pay transparency, the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus 2018 that domestic law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions. In the public and semi-public sectors, equal pay is applied in all jobs at all levels. However, most employers in the private sector do not apply job classification or job description schemes. They do not perform an evaluation of every profession or post for the purpose of defining equal work or work of equal value.

154. The Committee further notes from the above report that Cyprus has not yet taken the necessary measures to ensure application of Recommendation of the European Commission of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

155. As regards job comparisons, the Committee recalls that it considered that the situation in Cyprus was in conformity with Article 20 (Conclusions 2012) as following the adoption of Law L. 38(I)/2009 the comparison of pay between workers was extended to companies belonging to the same group/holding.

156. The Committee notes that it has not been demonstrated that the notion of work of equal value is adequately defined in domestic case law and, therefore, due to the lack of pay transparency and hence of information on comparable jobs and pay levels, it may be difficult for a potential victim of gender pay discrimination to successfully bring a case to court.

157. In view of the above, the Committee considers that the obligation to ensure pay transparency has not been 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 from the submissions of EQUINET that the Commissioner's competences as regards equal pay is limited to the investigation of complaints. The Committee further notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Cyprus (2019) that the only procedure available to change a discriminatory law is for the Equality Body to refer to the Attorney General and for the latter to promote a bill to be approved first by the Council of Ministers and then by Parliament. In December 2014, the Supreme Court ruled that this provision must be interpreted so as to mean that the Attorney General is under a duty to inform the executive regarding changes in the legislation deemed necessary by the Equality Body.

163. The Committee notes that the Equality Body has a duty to make recommendations to the competent Minister, the Parliament and affected groups of persons on, inter alia, the amendment of any legal provision or regulation which constitutes unlawful discrimination. The law empowers the Equality Body to issue such recommendations either in its own right or following a specific complaint to that effect referred to the Equality Body. It also has the power to conduct independent surveys and compile reports on any matter within its competence concerning any activity or practice in the public or private domain.

164. As regards the mandate of the equality body in terms of monitoring and decision-making functions assigned to it, the Committee observes that the Commissioner does not have the competence to provide independent assistance to victims. However, the Commissioner investigates complaints and submits concrete recommendations and suggestions to the authorities. It advises and assists the Government, the Parliament and other relevant stakeholders on any matter related to the promotion and protection of human rights. Furthermore, it fulfils a promotion function and public education role (e.g. raising awareness on human rights issues, publications).

165. As regards resources at the disposal of the equality body, the Committee notes from EQUINET that, over the period of 2006-2016, there has been an increase in the number of staff of the Commissioner and the allocated budget has remained stable.

166. In view of the above, the Committee considers that the obligation to maintain an equality body with a view to guaranteeing the right to equal pay has been satisfied.

Concluding assessment

167. Firstly, the Committee considers that the right to equal pay is recognised in the legislation.

168. Secondly, it considers that the obligation to ensure access to appropriate remedies in case of pay discrimination on grounds of gender has been satisfied.

169. Thirdly, the Committee considers that the lack of pay transparency is a major obstacle for victims of gender pay discrimination to prove discrimination and thus effectively enforce their rights. In the absence of job classification systems and hence of information on comparable jobs, making it difficult to compare situations of workers performing work of equal value, the right to equal pay may be rendered ineffective in practice. The Committee considers that the obligation to ensure pay transparency has not been satisfied.

170. Finally, the Committee considers that the obligation to maintain an 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 20.c of the Charter on the ground that pay transparency is not ensured in practice.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

172. Article 20.c of the Charter reads as follows:

Article 20 – 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. According to UWE, the Government provides only very few relevant and reliable figures. This is contrary to the requirements under the Charter which stipulates that Governments must provide relevant statistical data and must compare the actual situation with the requirements to be achieved, the resources employed and the results obtained. The Government makes choices in order that one or other criterion is included in its statistics and others are excluded in an attempt to conceal greater wage inequality than it admits. According to UWE, to assess the reality of the pay gap, it must be corrected or refined with other indicators and data. Moreover, it should not be calculated on the basis of hourly wages as this approach does not reflect the actual wage inequalities, because women are much more likely to be confined to part-time work than men.

174. According to UWE, there must be a systematic awareness-raising for all parties concerned with the issue of gender equality in employment, pay and positions of responsibility and the necessary funding must be provided to support the measures. As regards measures taken by the Government to address gender equality, UWE maintains that there is no sign of gender mainstreaming in the Cypriot policies concerned, decision-making or access to resources, or monitoring or evaluation.

2. The respondent Government

175. According to the Government, concerning Cyprus' performance as regards the gender pay gap *per se*, it is clear that significant progress has been made. The gap has decreased significantly since 2007 (22%) and continues on a downward trend reaching a percentage as low as 14% in 2015. With a percentage higher than the EU average in 2010, Cyprus currently ranks seventh amongst the countries with the lowest rate and has achieved a rate significantly below the EU average. Cyprus ranks fifth amongst the States having accomplished the highest percentage decrease in the gender pay gap during the period 2010-2015, despite the economic crisis and the need to implement a strict economic adjustment programme during 2013-2016.

176. The Government also responds to UWE's comment about consistent violation as regards women's pay both in the private and the public sectors, and states that the gender pay gap for 2014 of publicly controlled enterprises is actually negative and stands at -0.9%, which means that in this sector men's average gross hourly earnings are less than that of women.

177. In its further response on the merits, the Government indicates that according to the latest Eurostat data (2016), the gender pay gap in Cyprus has further decreased to 13.9%. The unadjusted gender pay gap has been the headline indicator in the European statistical system for a long time, to measure the average difference in hourly earnings between male employees and female workers. It is widely used in gender policy at the European and national level.

178. The Government also comments on UWE's references to the "gender overall earnings gap", which measures the average difference in earnings between men and women employed (working part-time or full-time) but also not employed. In this respect, according to the Government, the gender overall earnings gap in Cyprus (2014 figures) was 26.6%, which still places Cyprus amongst the best performing countries.

179. As regards UWE's claim that the measures taken exclude small enterprises, the Government states that when it comes to data published by Eurostat, for comparability reasons, there is a common definition for all member states, according to which, only data concerning enterprises with 10 or more employees should be taken into account. The Government argues that it is not up to a member state to decide, at national level, the structure and content of the indicators, which renders UWE's comment irrelevant. Moreover, in response to UWE's claim that the gender pay gap is likely to be even higher in small enterprises, the Government indicates that in enterprises with 1-9 employees the gender pay gap in Cyprus was actually lower (11,3%) than the gap in enterprises with 10 or more employees (14.4%).

180. According to the Government, despite not being enforced by law, all Government departments have appointed Equality Officers/representatives to handle gender equality issues, while in practice companies also appoint Equality Officers by choice. Furthermore, the Law on Equal Treatment of Men and Women in Employment and Vocational Training (No. 205(I)/2002) provides for equal treatment for men and women in respect to access to employment and employment practices, henceforth, access to vocational education and training as well as professional development and the conditions and preconditions of dismissal.

181. The Government further provides information about the project on the practical and effective promotion of gender equality as regards pay. This project consists of a broad mix of measures, aiming at eliminating the causes of the gap. It involves interventions in every relevant field: education, occupational counselling, labour law enforcement mechanisms, incentives for companies, training and guidance of social partners and raising public awareness. The following are examples of activities implemented in the framework of the project:

- Strengthening and upgrading of the inspection mechanism for the enforcement of equality in employment and equal pay legislation, including a training programme for officers and inspectors of the Ministry, along with officers from the Ombudsman's office, following a detailed training programme of theoretical and practical content, aimed at enhancing their knowledge and skills when handling complaints or conducting inspections involving inequalities in employment and pay. Their training included job evaluation methods.
- Certification for promoting gender equality: a national model for certifying enterprises that adopt policies promoting gender equality in the workplace has been developed. Also, a National Certification Body was established in April 2014 responsible for granting these certifications, by decision of the Council of Ministers. The National Body is chaired by the Ministry of Labour, while its members are the Gender Equality Commissioner and representatives of the employers' and employees' associations. According to the certification model, companies have the right to apply for two types of certification namely (a) "Best Practice" for individual practices applied, and (b) "Equality Employer" for adopting a comprehensive system of promoting gender equality in their workplace. There are 40 companies that have been awarded a certification so far.
- Reviewing of collective agreements: In 2013, the text of all signed collective agreements was reviewed, including the original text and their renewals, with the aim of examining their provisions and identifying any direct or indirect discrimination on pay based on gender.
- Training of social partner representatives and members of professional associations: trade union members, employers associations' representatives, lawyers, accountants, human resource professionals and members of professional associations, participated in the 2014 training seminars aimed at improving the level of company compliance with the Equal Pay Legislation. A guide was also issued and disseminated, which covered practical ways to promote pay equality while engaging in collective bargaining.
- Equal Pay Day: An "Equal Pay Day" event was organised twice (March 2013 and March 2015) raising public awareness on the gender pay gap and the detrimental consequences on women's economic and social life.
- Consultation to employers: A guide explaining in detail the provisions of the Equal Pay, and Protection of Wages Laws was issued and disseminated to nearly 1,500 companies and associations. Moreover, counsellors visited 400 companies for a personalised presentation of the guide, aiming at strengthening the companies' commitment for compliance.

182. The Government contends that the successful implementation of the above measures, has contributed, inter alia, to the significant decrease of the gender pay gap. Several of the measures are ongoing and expected to have long-term benefits. Due to the gradual but continuous advancement of women's position in the labour market the downward trend of the gender pay gap in Cyprus is expected to continue.

183. In its further response on the merits, the Government indicates that as far as the on-going measures are concerned, another “Equal Pay Day” event was organised (17 March 2018). The event contributed to raising public awareness on the gender pay gap and bringing together public authorities, social partners and working people in a collective effort to reaffirm commitment to reduce the gender pay gap and promote cooperation for further action. Moreover, the National Certification Body for Gender Equality continues its work, by granting certifications to companies that implement good practices to promote gender equality. Companies that are awarded the “Equality Employer” certification, have demonstrated their fulfillment of the pay equality principle, amongst other criteria.

B – Assessment of the Committee

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

184. The Committee notes from Eurostat that the gender pay gap stood at 21.8% in 2006, at 16.8% in 2010, at 14% in 2015, at 13.9% in 2016 and 13.7% in 2017. The EU 28 average in 2017 was 16.0%. The overall earnings gap in 2014 was 26.9%. The adjusted or “unexplained” gender pay gap was at 12.2% compared to an EU-28 average of 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*

185. 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.

186. 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).

187. 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.

188. 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 (IAAE) v. France, Complaint No. 13/2002, *op.cit.*, §53).

189. Under Article 20.c of the Charter 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 No. R(98)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).

190. 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.

191. 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.

192. The Committee observes that Cyprus has taken a wide range of measures to reduce the gender pay gap. The Committee considers that the setting up of a National Certification Body which awards the “Equality Employer” certification, as well as awareness raising among employers to promote and adhere to the principles of equality, are examples of this action. Moreover, measures have been taken with a view to strengthening and upgrading the inspection mechanism; setting up of a national certification body to certify enterprises which adopt policies promoting gender equality; reviewing collective agreements to identify pay discrimination clauses; and training of social partners in matters of equal pay.

193. Moreover, the Committee observes that the Government has collected and analysed data and provided statistics regarding the situation of women in the labour market. The Committee considers that the downward trend in the gender pay gap (13.7% in 2017) since the year 2002 when the latter stood at 22.5% constitutes measurable progress.

194. On this basis, the Committee holds that there is no violation of Article 20.c as regards measures to promote equal opportunities in the labour market with regard to equal pay.

III. ALLEGED VIOLATION OF ARTICLE 20.D OF THE CHARTER AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION MAKING POSITIONS WITHIN PRIVATE COMPANIES

195. Article 20.d of the Charter reads as follows:

Article 20 – 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

196. UWE maintains that Cyprus does not have a mechanism to foster representation of women on boards of private companies. Women account for 8.4% of company board members. UWE also refers to ETUC who states that in April 2016 the average share of women on the boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3%, whereas the figure was only 10.9% in Cyprus.

197. UWE considers that the progress is slow and is confined very narrowly to the largest companies in the country and to boards of directors. Cyprus is still at the discussion stage of what should be done to end the under-representation of women in decision-making positions. The Cyprus Chamber of Commerce and Industry (CCCI) participates actively in the policy-making bodies dealing with gender equality issues and contributes to the promotion of the correct implementation of the existing legislation on equality, as well as on the strengthening of the position of women in employment. However, very few business leaders are women: only 8.4% in Cyprus, compared to 32.6% in the EU

2. The respondent Government

198. According to the Government, the employment rate of women was 64.1% in 2016 and 64.0% in 2015 as opposed to the employment rate of men at 73.9% in 2016 and 72.2% in 2015. The overall unemployment rate was 13.0% in 2016 and the unemployment rate for women was 13.5% compared to 12.6% for men.

199. As regard the participation of women in decision-making positions, the Employers and Industrialist Federation (OEB) has carried out specialised surveys, in order to ascertain the reasons why there are fewer women occupying such positions. The results were disseminated through press conferences and were discussed publicly. The conclusions of the surveys have been the basis of many actions undertaken by OEB in the field of gender equality. The Government considers it worthwhile to note that the majority of companies in Cyprus are small and medium-sized and/or are family businesses where gender issues are not so prevalent.

200. OEB has also amended its own articles of association in order to ensure the participation of women on their board. In Cyprus although 50.2% of working women hold high academic qualifications, only 27.5% of women are in decision-making positions according to a study by the University of Cyprus Field Research Centre. The study concluded that this situation has improved at least among administrative staff. It also found that the Cypriot businesses demonstrate their willingness to implement good practices to promote gender equality.

201. According to the Government, Cyprus Chamber of Commerce and Industry (CCCI) believes that women's participation in company boards can yield significant results in the company's competitiveness and encourages its member companies to adopt strategies and targeted measures to achieve gender equality on boards based on merit.

202. CCCI participates actively in the policy-making bodies dealing with gender equality issues and contributes to the promotion of the correct implementation of the existing legislation on equality, as well as on the strengthening of the position of women in employment. Further, according to the Government, CCCI, in close cooperation with the Cyprus Federation of Business and Professional Women (BPW), which operates under the auspices of CCCI, will continue its efforts to sensitise the business world, by raising awareness about the professional development of women.

203. In its further response on the merits, the Government indicates that although Cyprus does not have a mechanism to foster representation of women on the boards of private companies, various mechanisms have been put in place, to promote gender equality in the public and private sphere. This includes the Commissioner for Administration and Human Rights (Ombudsperson), the National Institution for the Protection of Human Rights, the Commissioner for Gender Equality, the Gender Equality Committee in Employment and Vocational Training and the Equality Inspectors of the Department of Labour/Ministry of Labour, Welfare and Social Insurance.

204. Moreover, according to the Government, the introduction of gender mainstreaming in economic decision-making in the public and private spheres is of primary importance in order to lay the foundations for sustainable progress. In addition, the Government considers that policy measures could be adopted with specific targets to promote a work-life balance, female entrepreneurship and the reconciliation of professional and private life, to encourage career development for both women and men. The contribution of the social partners and businesses in efforts to increase women's participation in economic decision-making is of critical importance.

205. The Government indicates that the promotion of women in economic life has been identified as a major priority of the Cyprus National Action Plan for Equality between Women and Men 2014-2017. The measures include schemes to increase the availability of high quality but low-cost child-care facilities, provide vocational guidance and training programmes, schemes to support women's entrepreneurship, reduce gender segregation in employment and eliminate the gender pay gap. The Ministry of Labour, Welfare and Social Insurance also proceeded with the establishment of a "gender equality label" for those businesses that actively promote gender quality policies.

B – Assessment of the Committee

206. The Committee considers that Article 20.d of the Charter 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).

207. 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%.

208. Finally, the Committee recalls that in respect of Article 20.d, as for Article 20.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.

209. The Committee notes that the Government has taken certain measures to meet its obligation to tackle vertical segregation in the labour market, as well as measures to promote the advancement of women in decision-making positions in private companies, such as introduction of gender mainstreaming in economic decision-making and making promotion of women in economic life a priority in the National Action Plan for Equality.

210. However, the Committee observes that the share of women in decision making remains very low at 10.5%. The Committee considers that measures taken have neither led to a balanced representation of women in decision making positions in private companies nor to a clear and significant trend for improvement in such representation in recent years.

211. Therefore, the Committee holds that there is a violation of Article 20.d of the Charter.

IV. REQUEST FOR COMPENSATION

212. 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 inviting the Committee of Ministers to recommend reimbursement of costs.

213. 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 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 12 votes to 3, that there is no violation of Article 20.c of the Charter as regards effective access to remedies;
 - unanimously, that there is a violation of Article 20.c of the Charter on the ground that pay transparency is not ensured in practice;
 - by 12 votes to 3, that there is no violation of Article 20.c of the Charter as regards equality bodies;

- by 14 votes to 1, that there is no violation of Article 20.c of the Charter as regards measures to promote equal opportunities between women and men in respect of equal pay

- unanimously, that there is a violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies.



Krassimira SREDKOVA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN Deputy
Executive Secretary