



European
Social
Charter

Charte
sociale
européenne

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Cyprus
Complaint No 127/2016

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

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 127 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

Represented by Ms Anne Nègre, member of the Versailles Bar
10 avenue du Général Mangin, 78000 Versailles - France

Tel. +33 (1) 39 54 65 12 - +33 (6) 86 46 23 09 - anne.negre@orange.fr

Respondent: Cyprus

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 13 December 2016, the High Contracting Party, Cyprus, represented by Ms Natalia Andreou, Agent of the Government of Cyprus, stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

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

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

1. On Cyprus's comments regarding paragraph 2 of the Explanatory Report to the Additional Protocol of 1995

Cyprus considers that the fact that UWE has submitted collective complaints against 15 States Parties to the Social Charter which have ratified the Protocol would seem "to suggest an alternative, and not a complementary procedure" (Observations Cyprus, paragraph 3).

There is no hierarchy in the reporting or collective complaints procedure, and neither is subordinate to the other.

Collective complaints are not designed to replace or duplicate the supervision cycles; they are another procedure. States can be the subject of a collective complaint even if they address subjects which are also being examined in the supervision cycle. In this way, they afford the opportunity to highlight and go deeper into certain aspects.

In this way, it is possible to avoid allowing too long a time to elapse between verifications of conformity of the policies pursued with certain articles, as the intervals between these verifications may be considerable.

Furthermore, a qualified organisation such as the UWE has no way in practice of suggesting a report on any violation whatsoever. It can neither initiate such a report nor contribute to it.

This democratic remedy, established in 1995, is a way of opening out to civil society. The fact of highlighting this failure to comply with the European Social Charter in respect of equal pay between women and men is a means of reinforcing the supervision of states.

Accordingly, if one concurs with the arguments submitted by Cyprus, the fact of submitting a complaint against 15 States Parties is a ground for inadmissibility in itself. But where is the text that forbids this? Nor is there any text preventing states reaching an agreement amongst

themselves to produce a response to the collective complaints, as a reading of the observations of certain states would seem to suggest.

There is nothing in the observations submitted by Cyprus that supports non-recognition of UWE's standing. The European Committee of Social Rights should declare the UWE competent.

2. On the motivation of the collective complaint alleged by Cyprus

Unequal pay between women and men for equal work is deeply rooted and derives from the history, culture and policies pursued in recent years – with repercussions in numerous fields, as pointed out in the statement of facts in the collective complaint.

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

The European Committee of Social Rights should take due note of this.

Many Cypriot texts have been included in the complaint and submitted for examination (Complaint pages 17 and 18 Documents 73 to 83) or are referred to in the Collective complaint, along with how they are applied in practice. Page 17 of the complaint focuses on the main texts applicable in Cyprus and how effective they are:

- ✓ Doc. 69: Article 28 §§ 1 and 2 of the 1960 Constitution of Cyprus establishes the principle of equality of the sexes
- ✓ Doc. 73: Act No. 158 of 1989, concerning the Provision of Equal Remuneration to Men and Women for Work of Equal Value. Enacted: 5 May 1989
- ✓ Doc. 74: Law No. 144(I) of 2000 amending Law No. 158 of 1989 concerning equal remuneration for work of equal value for men and women.
- ✓ Doc. 75: 2002 Cyprus – Act No 205(I) of 2002 to provide for equal treatment between men and women in the fields of employment, vocational training, promotion and working conditions; the legislation is primarily concerned with aspects relating to positive action, sexually-based advertising and sexual harassment. It also establishes remedies to deal with violations of the equality principle at all stages of the employment relationship, including access to and conditions of employment, promotions or benefits linked to the post.
- ✓ Doc. 75/1: Law No. 177(I) of 2002 providing for equal pay for men and women for equal work or work of equal value.
- ✓ Doc. 76: Law No. 191(I) of 2004 amending Law no. 205(I) of 2002 providing for equal treatment of men and women in employment and vocational training.

✓ Doc. 77: Law No. 58 (I) of 2004 on equal treatment in employment and at work, which establishes the principle that equal treatment will apply under all relevant legislation, irrespective of religion or beliefs, disability, age, race or ethnic origin or sexual orientation. It authorises reversal of the burden of proof and offers protection against all forms of inequitable treatment.

✓ Doc. 78: Law No. 40(I)/2006 amending the law on equal treatment between men and women in employment and vocational training. Enacted in 2006, CYP-2006-L-78290

✓ Doc. 79: Law No 38(I) of 2009 amending the Law providing for equal pay for men and women for equal work of equal value, transposing Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

✓ Doc. 80: Law No. 86(I) of 2009 amending the Law on equal treatment in employment and at work (No. 58(I)/2004)

In 2009, Cyprus amended the legislation on equal treatment of men and women in employment and vocational training and on equal pay for men and women for the same work or work of equal value.

✓ Doc. 81: Law No. 149(I) of 2014 amending the Law on equal treatment for men and women with regard to occupational pension plans (Amendment)

✓ Doc. 82: Law No. 150(I) of 2014 amending the Law on equal treatment of men and women with regard to employment and vocational training

✓ Doc. 83: Law No. 151(I) of 2014 amending the Law on equal pay for men and women for equal work or work of equal value (Amendment) with regard to the implementation of the principle of equal opportunities for and treatment of men and women in matters of employment and occupation.

A law dated 18 January 1991 established the independent post of Commissioner for Administration. Under Law No. 59 of 2004 on combating racism and other forms of discrimination, his responsibilities were extended to include combating and eliminating discrimination in the private and public sectors.

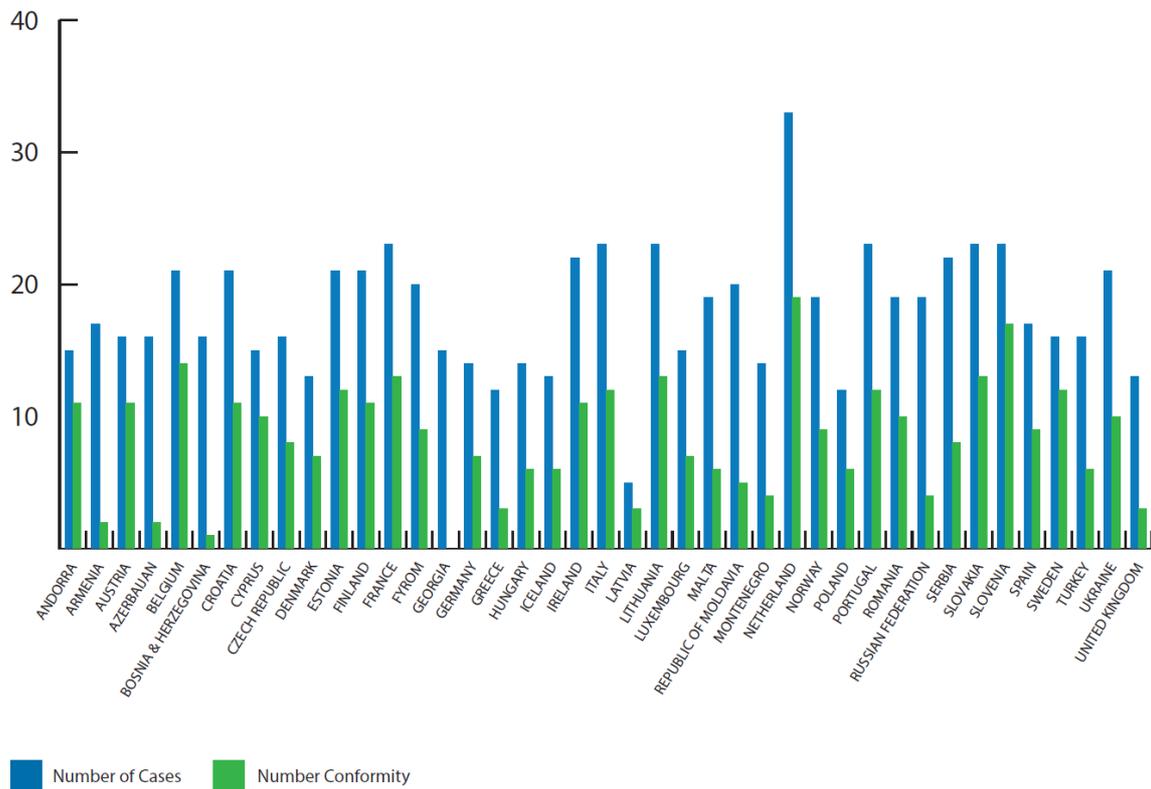
Consequently, the observation made by Cyprus on this point is incomprehensible given the texts that are referred to in the complaint. Similarly, the effectiveness of these measures has been examined, along with an assessment of the roles of the bodies responsible for monitoring this equality which is being contested (complaint, page 18).

The complaint contains figures shoring up this claim of unequal pay. In 2016, the EU confirmed the figures of 15.8 % for the gender pay gap in Cyprus and 16.3% in the EU. It also stated that “the gender overall earnings gap in Cyprus [stood] at 33.7% (the average gender overall earnings gap in the EU is 41.1%)” (Eurostat figures, 2010) (Complaint page 23, Document 20).

We also have the EU's EIGE figures for 2015. The EIGE in its *Gender Equality Index* calculated that the median European equality score was 52.9. The Cyprus index is under the median index of the EU and stands at 44.9 (Doc. 26: <http://eige.europa.eu/gender-statistics/gender-equality-index>) (Complaint, page 24).

The figures have been provided, and are and compelling.

In the “European Committee of Social Rights Conclusions in a Nutshell 2012-2015” (Complaint, Doc. 37) it is clear in its reports that with regard to the articles relating to labour rights, including the right to a fair remuneration (Article 4), Cyprus has an insufficient level of conformity.



In the European Committee of Social Rights conclusions on the Cyprus report (complaint page 10, extract Doc. 36), the following is stated in respect of Article 20:

“Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination. With a view to ensuring the effective exercise of this right ...

The Committee takes note of the information contained in the report submitted by Cyprus.

Equal rights

The Committee has examined the legislative framework for the right to equal treatment in previous conclusions, and therefore refers to these for an overview of the situation (Conclusions 2004, 2006, and 2008.)

The Committee previously concluded that the situation in Cyprus is not in conformity with Article 20 of the Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims”.

It adds:

“The Committee previously requested information on occupations reserved to one gender.

The report provides the following information;

Excluded from the scope of the Law on Equal Treatment of Men and Women in Employment and Vocational Training, are listed in the Annex of the above mentioned Law and are the following:

- *Occupational positions where physiology (excluding physical strength and stamina) would cause major alteration of the position itself, as in artistic shows.*
- *Employment in a position, the duties of which include delivery of services outside Cyprus, in a country whose legislation and customs do not allow services to be delivered by persons of one sex.*
- *Employment in a specific position, the duties of which include personal services and is mandatory to be carried out by persons of both sexes.*
- *Employment in a specific position, when the position refers to services of personal nature, such as house care of elderly and disabled persons.*
- *Employment of men as security officers in women' s prison or of women security officers in men' s prison.*
- *Employment in Security Forces or in private security bodies:*
- *(a) In special forces, the mission of which includes controlling and disarming violent persons, uproar repressing and hostage release or (b) In positions where the employment of a man or a woman is necessary for ethical reasons or in respect of the person's personality.*
- *Employment of women for underground work in mines.*

The Committee considers that certain exceptions on the list may allow an overly broad exclusion of women from certain occupations. It notes that the report states that the above mentioned exception only apply where they serve a legitimate purpose and are proportionate to the aim pursued”.

In this 2015 report on Cyprus, the Committee continues:

“Position of women in employment and training and Measures to promote equal opportunities

According to the report the employment rate for women was 53.6% in 2010 and 53,4% in 2009 as opposed to 61% and 60,08% for men in 2010 and 2009 respectively. The total unemployment rate was 6,2% in 2010, the unemployment rate for women was 6,4% in 2010 compared to that for men (6,0%).

The Committee previously noted that the Gender Pay Gap in Cyprus was one of the highest in the EU (27). According to the report the gender pay gap in Cyprus, has decreased significantly since 1995 (29%) and keeps following a downward trend, from 25% in 2005, to 24% in 2006 and further reduced to 21,8% and 21,3% in 2008 and 2009 respectively. According to the report continuous annual increases of the minimum wage during the last years, have contributed to the reduction of the pay gap, since the Minimum Wage Order covers occupational categories in which women are overrepresented”.

It can be seen, that the complaint is soundly argued and, moreover, as shown throughout this report and not only in these extracts, in what respect Cyprus has failed to take satisfactory action.

The Committee may refer to this key finding from the report written by the CEDAW Committee based on the information provided by Cyprus (Complaint page 25, Doc. 39): *“The Committee notes with concern that the wage gap between women and men remains at 18.3%.” (Doc. 39 page 7).*

Finally, the Committee urged Cyprus to “take proactive measures to monitor and close the gender wage gap, including through evaluation systems based on gender-sensitive criteria” (Doc. 39, page 7).

It has been clearly demonstrated that in Cyprus, there is in practice no equal pay between women and men for equal, similar or comparable work, to use the terminology of the reports of the European Committee of Social Rights, contrary to what is claimed in the observations submitted by Cyprus. This is confirmed by all the national, European and international analyses and the various reports to which the country is subject. And looking at these reports, it can be seen that the data in question have been provided by the countries themselves. The action taken by this country to ensure equality is unsatisfactory and violates the provisions of the Charter.

It should be added that a female employee who suspects unequal pay when compared with a male colleague cannot prove it without the intervention in practice of the Labour Inspectorate to verify it at enterprise level. The Labour Inspectorate has the legal means of demanding to see work contracts and pay slips; a female employee cannot do this. If the inspectors do not have these duties, regarded as priority duties, then the Charter has been violated because the state fails to take the necessary steps to ensure that there is, in practice, equal pay for equal work in the country. This is a violation of the Charter.

This country could have provisions granting access to company data on posts and making such data available to employees. The burden of proof would not then lie with the weakest. For the conditions of access to justice are at the female employee’s risk due, in most cases to a lack of proof, and the body of legislation does not take it sufficiently into account. This is the responsibility of the state which allows this situation of inequality to persist, constituting a violation of the Charter.

Nor with regard to women in decision-making positions is the Charter applied because all the conditions must be put in place to ensure equal pay between women and men without any discrimination. The fact that there are so few women in decision-making positions is evidence of discriminatory treatment against women, which is clearly in violation of the Charter and of the state’s responsibility.

3 Concerning the number of collective complaints and consultation among states

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

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

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

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

The UWE's complaint should therefore be declared admissible

ON THESE GROUNDS,

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

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

and to examine this collective complaint on the merits.

Without prejudice
19 March 2017

A handwritten signature in black ink, appearing to read "Anne Mepre". The signature is written in a cursive, slightly slanted style.

