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CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

28 May 2018

Case Document No. 8

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

**OBSERVATIONS BY EQUINET, EUROPEAN NETWORK OF
EQUALITY BODIES**

Registered at the Secretariat on 30 March 2018

Observation on equal pay before the European Committee of Social Rights

Collective complaint of University of Women of Europe v. 15 member states

The Office of the Commissioner for Administration and Human Rights is an institution of extra judicial control (L. 3/1991) but not a quasi-judicial body and may, therefore, not bring cases before the Cyprus courts or any court, whatsoever.

After the transposition of the EU Directives to national laws (following Cyprus EU accession in 2004), the Commissioner was assigned to act also as Equality Body. As Equality Body, the Commissioner examines complaints related to discrimination. The **Combating of Racial and other forms of Discrimination Law** (L. 42(I)/2004)¹ provides the legal basis for Commissioner's interventions. According to the law (article 5) any discrimination on grounds of race, community, language, colour, religion, political and other beliefs and national or ethnic origin is prohibited. The Law covers discrimination on:

- the conditions of employment, including access to as well as promotion and selection criteria in employment, self-employment and occupation;
- the access to vocational guidance, vocational training and retraining and obtaining practical work experience;
- the working conditions and terms of employment, dismissals and pay;
- the membership of and involvement in organisations of workers, employers or any organisations whose members carry on a particular profession, including the benefits provided for by such organisations;
- the social protection, including social security and healthcare;
- education; and
- the access to and supply of goods and services including housing.

However, **gender is not included** in the L.42(I)/2014. Competences to combat discrimination on the ground of gender are given by the **Equal Treatment of Men and Women in Employment and Vocational Training Law** (L.205(I)/2002)². The Law provides a framework for the **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 positive actions.

¹ Transposition of 2000/43/EC.

² Harmonisation with 76/207/EEC, 97/80/EC and 2006/54/EC.

Commissioner's competences are also arising from the following legislation:

1. The Equal Treatment in Employment and Occupation (L. 58(I)/2004) [**does not include the gender**].
2. The Equal Treatment irrespective of racial or ethnic origin (L.59(I)/2004) [covers social protection, healthcare, social benefits, education, access to and supply of goods and services – **gender is not included**]³.
3. **The Equal Treatment of Men and Women (Access to and Supply of Goods and Services) Law** of 2008, (L.18(I)/2008)⁴.
4. **The Equal Pay of Men and Women for Equal Work or Work of equal pay Law** of 2002 (177(I)/2002)⁵.

According to the L. 177(I)/2002, the Minister of Labour, Welfare and Social Insurance is responsible for the implementation of the Law. The Minister designates, according to the law, Inspectors or other responsible officers for the efficient implementation of the legislative provisions. The Inspectors (or other Officers) are responsible to act according to L. 177(I)/2002 and exercise their duties as provided in articles 11, 12 kai 13 of the law. The article 11 states that Inspectors major tasks shall be:

(a) To ensure the full and effective application of the provisions of this Law, either by carrying out an 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) to report problems to the Minister, arising from the application of this Law and submit recommendations concerning measures that may be taken to tackle them.

In article 12 Inspectors' powers are defined and in article 13, the actions that Inspectors should take are stated, when a complaint is submitted.

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

³ Harmonisation with 2000/43/EC.

⁴ Transposition of 2004/113/EC Directive.

⁵ Harmonisation with 75/117/EEC, 97/80/EC and 2006/54/EC.

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;

(b) (...)

(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;

In articles 15 and 16, information about the Committee for Investigation and Assessment of Work is provided (appointed by the Minister, number and profile of members).

Commissioner's competences are arising by article 23A of the legislation, regarding the extrajudicial protection and the burden of proof. According to this article, any person that 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.

The Commissioner for Administration Law and the Combating of Racial and Other Grounds of Discrimination provide the Commissioner competences and powers in several articles.

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. Except of the complaint handling, the Commissioner carries out advisory functions (e.g. through participation in the parliamentary committees' discussions), monitoring functions (submitting concrete recommendations and suggestion to the authorities) public education function (e.g. raising awareness on human rights issues, publications) and promotion functions.

In the last 8 years, only two complaints were submitted in our Office stating violation of the equal pay right. The first complaint was submitted in 2011 and it was claimed that in the Cyprus Broadcasting Corporation the salary terms differed between men and women. The Commissioner after starting 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). So the Commissioner ask the competent Ministry to proceed with the procedure and activate the Committee for Investigation and Assessment.

In the second complaint, in 2012, the complainant claimed unequal pay of employees in two different departments (radiodiagnostic and radiotherapy sections) of the Bank of

Cyprus Oncology Centre. After the 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. The complaint didn't fall within the scope of the law and its investigation was terminated.

Commissioner's competences related to (un)equal pay are only limited to the investigation of complaints. The Equal Pay of Men and Women for Equal Work or Work of equal pay Law provides the legal basis for the investigation of the complaints in accordance to the Combating of Racial and other forms of Discrimination Law. The Equal Pay of Men and Women for Equal Work or Work of equal pay Law has no provisions for any ex officio interventions, or any promotion functions (eg. Campaigns or publications) or any other actions for the promotion of the equal pay between men and women.

Moreover, the limited number of complaints (only 2 in the last 8 years), didn't justify any other intervention. Even if, according to Eurostat, the unequal pay percentage (approx. 14%) in Cyprus is very well known, the Commissioner hasn't received any relevant complaints. The Commissioner for Administration acts independently and in accordance with relevant legislations.