



European  
Social  
Charter

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

**DECISION ON THE MERITS**

**Adoption: 5 December 2019**

**Notification: 28 February 2020**

**Publicity: 29 June 2020**

**University Women of Europe (UWE) v. Czech Republic**

Complaint No. 128/2016

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, Rapporteur General  
Petros STANGOS  
József HAJDU  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN  
Karin Møhl LARSEN  
Yusuf BALCI  
Ekaterina TORKUNOVA  
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 22 May 2019, 12 September 2019, 16 and 17 October 2019, 2,3 and 5 December 2019,

On the basis of the report presented by Kristine DUPATE,

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 the Czech Republic is in violation of Articles 1 and 4§3 of the European Social Charter ("the 1961 Charter") and Article 1 of the Additional Protocol of 1988 to the 1961 Charter ("the 1988 Additional Protocol"), in light of the non-discrimination clause of the Preamble to the 1961 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 the Czech Republic.
3. On 4 July 2017, referring to Article 6 of the 1995 Additional 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 of the Czech Republic ("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 might wish 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 ("the 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. On 5 October 2017, the Government asked for an extension of the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 3 November 2017. The Government's submissions on the merits were registered on 3 November 2017.

9. The deadline set for UWE's response to the Government's submissions on the merits was 9 February 2018. UWE's response was registered on 9 February 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 5 April 2018. On 27 March 2018, the Government asked for an extension of the deadline for presenting its further response. The President of the Committee extended this deadline until 20 April 2018. The Government's further response was registered on 20 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 the Czech Republic constitutes a violation of Articles 1 and 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol on the following grounds:

- Firstly, UWE alleges that 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 a very small number of women occupy decision-making positions within private companies, since there are no effective legislative measures to ensure a balanced 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 maintains that the general pay gap situation is not in contravention of Article 4§3 of the 1961 Charter, and the situation as regards the representation of women on boards of private companies does not constitute a breach of Article 1 of the 1988 Additional Protocol.

## **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 the 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, undocumented work or the informal economy, both of which are sectors in which 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 on 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 1 of the 1988 Additional Protocol 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 1 of the 1988 Additional Protocol.

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 considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. As regards the Czech Republic, the ETUC maintains that the gender pay gap has both, substantial and procedural dimension. From a substantive perspective, there are at least the following elements which, according to the ETUC, should (at least in combination) lead to a violation of Article 1 of the 1988 Additional Protocol:

- statistical evidence shows that there is still a gender pay gap. Even if it might have been reduced during the last time any gender pay gap does not fulfil the non-discrimination requirement based on sex.
- the official statistics are still excluding small (micro) sized enterprises. It is therefore most probable that the gender pay gap is even higher in these enterprises.

24. From the point of view of the ETUC this illustrates that there is a violation of Article 1 of the 1998 Additional Protocol to the Charter from the substantive perspective.

25. From a procedural perspective, it appears evident that there is also a violation as the result of the fact that eliminating the gender pay gap is not achieved. In particular, it is obvious that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient:

- in principle, the labour inspectorate should (be able to) ensure the satisfactory application of this important principle; despite the fact that the respondent State has ratified ILO Convention No. 81 on labour inspection it is obvious that this is not the case (in particular taking into account the nearly total lack of supervision in the SMEs);
- all other means to ensure the satisfactory application of the principle of equal value have not proven insufficient.

26. From the point of view of the ETUC this illustrates that there is a violation of Article 1 of the 1988 Protocol also from the procedural perspective.

27. Concerning the (under-)representation in decision-making positions within private companies, according to ETUC this problem has only been addressed in more recent years. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 1 of the 1988 Protocol.

28. As regards substantive dimension, 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 1 of the 1988 Additional Protocol from the substantive perspective.

29. As regards procedural perspective, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

30. From the point of view of the ETUC this illustrates that there is a violation of Article 1 of the 1988 Protocol also from the procedural perspective.

## **OTHER OBSERVATIONS**

### **A – The European Union**

31. 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.

32. 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)<sup>3</sup>, the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

33. 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.

34. In November 2017, the Commission adopted a Communication: EU Action Plan 2017-2019<sup>10</sup>, 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

35. 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.

36. 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.

37. 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)**

38. According to EQUINET, the Public Defender of Rights has only dealt with several cases of pay discrimination since 2009, for various reasons, such as underreporting discrimination for lack of trust in government institutions, fear of retaliation etc.

39. Since 2014, the Office of the Public Defender of Rights have been dealing with the issue of unequal pay mostly by awareness-raising activities, both nationally and internationally. In 2015 and 2016, the Office was an official partner of the Mind the Gap! project, whose main aim was to raise public awareness of the gender pay gap issue.

40. The Office is currently part of the project of the Ministry of Labour and Social Affairs called “22% to Equality”. The objective of the project is contribute to the gradual reduction of the pay gap, to connect and activate the main entities involved in this phenomenon in order to change the current unsatisfactory situation, raise awareness of the issue and its complexity, and to suggest and verify the innovative instruments and approaches aimed to resolve the issue. The Office participates in creating the above-mentioned methodology and the pilot inspections of the District Labour Inspectorates as a consultant.

41. In 2016, the Office has participated in preparation of the “EQUINET Handbook: How to build a case on equal pay”. Finally, the Office recommended that the Minister of Labour and Social Affairs and the Minister for Human Rights, Equal Opportunities and Legislation gradually implement some of the measures included in the 2014 Commission Recommendation on strengthening the principle of equal pay between men and women through transparency.



42. As regards the activities of the State Labour Inspectorate, the Public Defender of Rights identifies a number of shortcomings in the inspection of equal pay between women and men by the Labour Inspectorate, such as the sampling method used to conduct inspections, the Labour Inspectorates still being unable to examine possible indirect discrimination by the employer based on gender. According to the Public Defender of Rights the inspectors are unable to determine whether work is of the same value.

43. In conclusion, the Public Defender of Rights underlines that further efforts are needed to remove the persisting issue of unequal position of women and men. However, it points to the shortage of resources at its disposal to deal with cases of discrimination and also, inability to represent the individuals in court.

## **RELEVANT DOMESTIC LAW**

### **A – Act on Equal Treatment and Legal Means of Protection against Discrimination (“Anti-discrimination Act” n° 108/2009) of 2009 (subsequently amended).**

#### **Section 5§1**

44. The above-mentioned provision defines pay using the term remuneration, which shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment.

#### **Section 10§2**

(1) In the event of a violation of the rights and obligations following from the right to equal treatment or of discrimination, the person affected by such act shall have the right to claim before the courts, in particular, that the discrimination be refrained from, that consequences of the discriminatory act be remedied and that (s)he be provided with appropriate compensation.

(2) Should a remedy under paragraph 1 above not appear sufficient, particularly due to the fact that a person's reputation or dignity or respect in society has been harmed, the person shall also have the right to monetary compensation for non-material damage.

(3) The amount of the compensation under paragraph 2 above shall be assessed by the court taking into account the seriousness of the damage and the circumstances under which the right was violated.

### **B – Labour Code of 2006 (Act No. 262/2006)**

#### **Article 110**

45. All employees shall be remunerated equally if they perform equal work or work of equal value. The same work or work of equal value is taken to mean work of the

same or comparable complexity, responsibility and strenuousness, which is performed under the same or comparable working conditions and which is of equal or comparable work efficiency and produces equal or comparable work results.

**Article 16§1 and 2**

46. It is any employer's obligation to secure equal treatment of all employees with regard to working conditions and remuneration, any discrimination being prohibited.

**Article 346b § 4**

47. The employer is prohibited to sanction or disadvantage her or his employee in any way for the reason that the latter seeks to remedy a breach of her or his rights related to work conditions including remuneration.

**C – The Civil Procedure Code (Act No. 99/1963)**

48. Where the decision being enforced imposes another obligation, the court shall levy a fine of up to CZK 100,000 on the liable person for the breach of such obligation duty" and "where the liable person fails to carry out the decision being enforced even after having been fined, the court shall, upon the entitled person's motion, levy additional adequate fines on the liable person until the enforcement of the decision is discontinued".

**D – An amendment to Act No. 187/2006, on sickness insurance**

49. Introduced a new postnatal care allowance for fathers. Its main purpose is to strengthen the bond between the child and both parents in the early weeks of the child's life and to support and motivate the fathers to participate in the care for the newborn and to promote relationships within the family. The introduction of the postnatal care allowance for fathers will create room for men's participation in care for little children and the household and it will also allow the fathers to develop their parental competences while preserving the security of their employment and earnings.

**RELEVANT INTERNATIONAL MATERIALS**

**A – Council of Europe**

**1. Committee of Ministers**

50. The Committee of Ministers adopted several recommendations, such as Recommendation 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 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(1998)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.

51. More recently, in its Recommendation 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)**

52. In its Resolution 1715(2010) PACE observed that discrimination against women in the labour market has a long history – as well as efforts to fight this discrimination. 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.

53. 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.

54. 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.

55. In its Resolution 1921(2013) on 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)**

56. 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.”

57. 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**

58. 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.”

59. 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.

60. 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*

61. 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*

62. 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)<sup>29</sup>; Slovakia (2015); Spain (2015); Denmark (2015)<sup>16</sup>

### **2. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Committee on Economic, Social and Cultural Rights**

63. 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)**

64. 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**

### **1. ILO Equal Remuneration Convention 100**

65. 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**

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

67. The Treaty 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.”

68. The Treaty on the Functioning of the European Union (TFEU):

#### **Article 830**

“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. [...]”

69. The Charter of Fundamental Rights of the European Union (CFR), legally binding on all EU Member States 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**

70. 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."

71. 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).

72. 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.

73. The Capital Requirements Directive (2013/36/EU) addresses directly the issue of 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**

74. 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.

75. 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".

76. 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**

77. 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/EU 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**

78. 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.

79. 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).

80. 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).

81. 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).

82. 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).

83. 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).

84. 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).

85. 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).

86. 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).

87. 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).

88. 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).

89. 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

90. 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.

91. 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)).

92. Article 1 of the 1988 Additional Protocol (and Article 20 of the Revised Charter) to the Charter 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.

93. All the States Parties to the Charter having accepted Article 4§3 of the 1961 Charter and/or Article 1 of the 1988 Additional Protocol are aware that this right has to be practical and effective, and not merely theoretical or illusory (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

94. The Committee notes that UWE also invokes Article 1 of the 1961 Charter concerning the right to work. However, it considers that in accordance with its well-established case law the assessment in substance more appropriately belongs under Article 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol.

95. 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.

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

97. 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).

98. 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 obligations arising from in Articles 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol in the light of the current state of international and European law and practice in the area.

99. 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.

100. 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 Articles 4§3 of the 1961 Charter and Article 1.c of the 1988 Additional Protocol. 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 1.c of the 1988 Additional Protocol to 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 1.d of the 1988 Additional Protocol, 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 4§3 OF THE 1961 CHARTER AND ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY**

101. Articles 4§3 of the 1961 Charter and 1.c of the 1988 Additional Protocol read as follows:

### **Article 4 – Right to a fair remuneration**

Part I: "All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."

Part II: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

...

3. to recognise the right of men and women workers to equal pay for work of equal value;

...

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions."

**Article 1 of the 1988 Additional Protocol – 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*

102. According to UWE, the fact that a set of formal legal documents (constitution laws etc.) prohibit gender discrimination and provide that equal treatment must be ensured in practice, does not mean that the relevant provisions are actually implemented.

103. UWE considers that in the present case, the information provided by the respondent Government merely takes the form of a description of the legal and institutional framework, there being a general lack of clarifications which could serve to determine the conformity of the policies followed with the requirements of the Charter.

#### *Effective remedies*

104. According to UWE, the legislation must produce sufficient effects, through appropriate monitoring and administrative supervision mechanisms that are reasonably regular and effective, as well as judicial remedies that are accessible and reliable. Claimants must also be protected against any kind of retaliatory measures.

105. UWE refers to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: the Czech Republic 2017 where the experts also note the difficulties of enforcing the law. In cases of alleged

discrimination, civil actions may be brought under special provisions of the Anti-discrimination Act. The Civil Procedure Code applies, as does the shift of the burden of proof. Therefore, if the claimant states before the court facts from which it may be inferred that there has been direct or indirect discrimination, the defendant must prove that there was no breach of the principle of equal treatment. In 2006, the Constitutional Court declared the Czech provisions on burden of proof compatible with the guarantees of fair trial.

106. The application of provisions on the burden of proof was later also specified by the Supreme Court. Nevertheless, according to the Civil Procedure Code, the shift in burden of proof does not apply in all situations. The Public Defender of Rights recommended that Section 133a be amended in order to apply the shift in burden of proof in all discrimination cases. However, according to UWE, the Government did not accept the amendment. Thus, according to UWE the shift in the burden of proof is not effective.

107. UWE further notes from the above mentioned Country Report that the cost of proceedings has a dissuasive effect on victims, who do not expect to win their cases. This, according to UWE, could be one of the explanations for the fact that there have been almost no rulings on pay inequality and discrimination. Although trade unions may bring proceedings, as in other countries, they rarely do so in cases of this kind.

108. UWE also claims that rather than being proof that there is no inequality or discrimination, the lack of proceedings and reporting of wage irregularities is more likely to be proof that the inequalities are not coming to light, probably on account of a kind of implicit or explicit dissuasion in respect of the women who are the victims.

#### *Job comparisons and pay transparency*

109. UWE observes that the Government does not indicate the number of non-neutral classifications or the measures taken to encourage the negotiation of classifications, in the absence of a requirement to establish them. The Government provides no information about the component elements or characteristics of this instrument, nor on any pay gap calculation method for firms. There is a lack of information concerning occupational categories with clearly defined classification criteria, and the pitfalls have not yet been properly addressed. UWE believes that this issue should not just be dealt with through collective bargaining but also through Government actions.

110. According to UWE, examples of indirect discrimination bias have been identified in job assessment and classification methods. However, nothing has been done to address them effectively in policies, such as the establishment of the criteria to assess jobs and the application of these criteria in the weighting and ranking of jobs.

#### *Equality bodies and other institutions*



111. UWE refers to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: the Czech Republic 2017, according to which the Czech Ombudsman is not empowered to represent victims before the courts. The Ombudsman can only evaluate whether a case involves discrimination or not, and provide the victim with an opinion as to whether the case is likely to be successful before the Czech courts.

112. UWE furthermore claims that there is a lack of evaluation of the action taken by the equality bodies and the respondent State's submissions provide no clarification. In particular, according to UWE, it is not clear how many cases considered by the equality bodies have been dismissed for lack of evidence. As regards the activities of the Labour Inspectorate, UWE notes that no information has been provided on the number of investigations conducted in companies or the number of times the labour inspectors or other relevant institutions have taken action concerning specific issues.

113. According to UWE, another factor that may have a negative impact on women workers is the trade unions' lack of interest in equal pay for women and men. They rarely take up these issues and do not bring proceedings in inequality or discrimination cases. In major Czech trade union confederations, a man usually occupies the presidential position. The situation is similar in the employers' organisations.

## **2. The respondent Government**

### *Recognition of the right to equal pay in legislation*

114. The Government claims that domestic law provides a comprehensive system of safeguards of the right to a fair remuneration as required by Article 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol. According to the Government, the national legal framework for the protection of individuals against discriminating acts relating to unequal remuneration for women and men is consistent, functioning and sufficient.

### *Effective remedies*

115. According to the Government, the Czech legal order contains a firm and effective national system of remedies that allows for the rights in question to be exercised.

116. As regards the effectiveness of the legal framework, particularly remedies against discriminatory treatment on the ground of gender, the Government refers to the fact that the gender pay gap and pay discrimination between women and men in the Czech Republic are intrinsically linked to a small number of court actions where claimants alleged violations of the Anti-discrimination Act on the grounds of unequal remuneration. The reasons for this situation are complex, taking into consideration legal, sociological and psychological aspects. The factors that may contribute to the reluctance of women to bring actions must be viewed in a combined way and not individually. In particular, the Government refers to the difficulties in making comparisons when assessing unequal remuneration. When comparing, the persons who are being compared also have, in addition to sex as a variable, other more or less

quantifiable characteristics (education, practical experience, language skills, etc.).

117. In response to the allegations presented by UWE, the Government submits information as regards access to legal remedies and their effectiveness. The Government highlights the following issues: (i) compensation awarded in case of discriminatory treatment, (ii) lack of confidence in judicial system, (iii) financial costs of bringing a case and (iv) fear of retaliation.

118. As regards the adequacy of compensation awarded, according to the Government, specific legal remedies against discrimination in labour relations are provided in Section 10 §§ 1 and 2 of the Anti-discrimination Act (Act No. 189/2009). They are (a) an action to cease and desist from discrimination, (b) remedy for the consequences of the discriminatory act, and (c) just satisfaction. Should those remedies not appear sufficient, in particular due to the fact that a person's good reputation, dignity or respect in society has been considerably impaired owing to the discrimination, the person shall also have the right to demand (d) monetary compensation for non-pecuniary damage.

119. As regards the remedy of just satisfaction, the sanction typically takes the form of an apology, or mere court ruling that the right to equal treatment was violated. However, it is more important to mention that it is possible to claim monetary compensation for non-pecuniary damage under Section 10§2 of the Anti-discrimination Act when remedies other than monetary ones do not provide the claimant with real and effective protection and are not, at the same time, dissuasive *pro future*.

120. As regards the financial burden of court proceedings, the Government maintains that the "unwillingness" of people affected by discrimination to claim their right to equal remuneration can also be caused by the financial burden related to court proceedings. In general, it is possible for the claimant to ask for free legal aid. In this regard, the Czech Bar Association can assign a lawyer to people unable to afford one. The lawyer is obliged to accept the case and is not entitled to a fee or only to a reduced fee. Where it is necessary for the protection of the party's interests, the presiding judge shall appoint a legal representative at the request of the person for whom conditions for exemption from court fees have been met.

121. However, victims of discrimination who intend to initiate a civil dispute or a dispute in administrative court proceedings do not have to approach a lawyer as under Section 11 of the Anti-discrimination Act they can approach a juristic person addressing discrimination issues and have that person represent them. Moreover, according to the Government, the Public Defender of Rights provides methodological assistance to the victims when filing motions to initiate proceedings on the grounds of discrimination.

122. When considering the financial burden to defend the rights of victims of discrimination, it cannot be overlooked that legal costs including court fees in addition to the costs of representation play a major role. By an amendment of the Act on Court Fees effective from 1 October 2017, the court fees in relation to (explicitly) actions based on the Anti-discrimination Act were set to CZK 1,000 only.

123. As regards the lack of confidence in the justice system, according to the Government, it cannot be ruled out that a certain level of mistrust in the justice system can be one of the factors that may discourage discrimination victims from claiming their rights before courts. Lack of confidence in the courts and the justice system, as indicated by a Eurobarometer survey, in which the Czech Republic was rated among the three countries with the lowest confidence in the justice system, is, however, linked primarily to the lack of general awareness of the options provided by the legal and justice system and its actual functioning.

124. As regards the threat of retaliation, in cases where a victim of discrimination herself or himself, or through another person, exercises his or her rights, the Anti-discrimination Act covers the situation and considers maltreatment, sanction or disadvantage that has occurred as a result of exercising the rights under this Act to amount to persecution, which itself is a form of discrimination.

125. According to the Government, it is particularly important to note that according to Article 346b§4 of the Labour Code, the employer is prohibited to sanction or disadvantage her or his employee in any way as a result of the latter seeking to remedy a breach of her or his rights related to work conditions, including remuneration. Furthermore, according to Article 16§1 and 2 of the Labour Code, the employer is obliged to secure equal treatment of all employees with regard to working conditions and remuneration, any discrimination being prohibited. The Inspectorate then oversees compliance with these rules on the basis of Section 3§1a) of the Act No. 251/2005 (the "Act on the Labour Inspection") and may impose pecuniary sanctions for infractions or administrative delicts in the amount of CZK 500,000 for a conduct of unequal treatment in the relevant area.

126. The Government concludes by indicating that, although the situation in the Czech Republic is not perfect and there is still room for improving the legislation and removing obstacles to progress in women's difficult fight against pay discrimination, the national legal framework to protect individuals against discriminatory acts, related to unequal pay between women and men, is consistent, functioning and sufficient. The Government concludes that the situation does not amount to a violation by the Czech Republic of Article 4§3 of the 1961 Charter and Article 1 of the 1988 Additional Protocol.

*Pay transparency and job comparisons*

127. In relation to UWE's statement that women who may wish to make complaints find it hard or impossible to obtain comparative data concerning the wages paid, the Government reiterates that extensive data, including those specific to gender and remuneration, are fully available on the website of the Czech Statistical Office.

128. In addition, according to the Government, comparative data concerning the wages paid according to age, sex, level of education, region and profession, can be easily accessed using the online *calculator of fair remuneration*. It is a complex tool that may be used to get a better idea on an individual's position in the labour market or for salary negotiation. The application can be useful when applying for a new job, changing profession, moving, changing position within a company's hierarchy or getting back to work after parental leave.

129. Furthermore, the introduction of the Swiss software Logib is planned to be pilot tested with 30 employers from both public and private sector. Subsequently, it will be provided to employers free of charge.

#### *Equality bodies and other institutions*

##### The Labour Inspectorate

130. The Government disagrees with UWE's claim that equal pay for women and men is not a priority for the State Labour Inspection Office. It states that, on the contrary, inspecting equal treatment and non-discrimination in the exercise of the right to employment and rights in the workplace is among the main inspection missions of the Labour Inspectorate approved every year.

131. According to the Government, in 2016, the Inspectorate carried out two extraordinary inspection campaigns aimed at equal pay for women and men. In 2017 it dedicated a special inspection objective to the equal pay issue, which envisaged some 160 inspections to be carried out in this area. In sum, 413 inspections focused on the gender pay gap were carried out in 2016 with 409 employers, of which 319 were legal entities and 90 were natural persons. Of the total number of inspections, 107 inspections revealed a violation of the equal treatment and non-discrimination principles, of which 45 were violations in the area of unequal treatment in terms of the pay for work of equal value.

132. The Government also states that the Inspectorate is an active partner for the civic society in projects dealing with this topic and that it also cooperates with the Public Defender of Rights and the Ministry of Labour and Social Affairs (e.g. as part of the project "22 % k rovnosti" (22% to Equality)).

133. As part of their activities, inspectors also provide free legal advice in approximately 10,000 cases per year. Thus, according to the Government, the criticism voiced by the complainant organisation as to the Inspectorate's laxity can therefore be clearly denied.

## Trade Unions and employers' organisations

134. The Government strongly disagrees with UWE's allegation that trade unions and employers' organisations lack interest in equal pay for women and men. *Českomoravská konfederace odborových svazů* [Czech-Moravian Confederation of Trade Unions] (ČMKOS), the biggest independent confederative association of trade unions is involved in the fight for gender equality. Its Programme for the period 2014–2018 contains references to key gender equality issues in several provisions. In particular, it highlights the necessity of focusing on elimination of all forms of discrimination including that on grounds of gender, eliminating differences in remuneration between women and men, assessment of the situation in the labour market including from a gender perspective, work-family-and-private-life balance and equal representation of women and men in particular in decision-making positions.

135. According to the Government, the ČMKOS Committee's priority for the period from March 2017 to February 2018 was remuneration, particularly the campaign against cheap labour which encompassed the gender pay gap. The gender aspect was an essential part of the campaign as the lowest wages and problematic work conditions were in sectors dominated by female labour. It also published a leaflet on gender equality and protection from discrimination.

136. The representatives of the ČMKOS Committee represent trade unions in the Gender Equality Council of the Government and its Committees, such as the Committee for the Institutional Safeguarding of Equal Opportunities for Women and Men, the Committee for Work-Private-and-Family- Life Balance, and the Committee for Equal Representation of Women and Men in Politics and Decision-Making Positions. ČMKOS Representatives in all three Committees are women.

## The Public Defender of Rights

137. The Government responds to UWE's criticism as regards the role of the Public Defender of Rights.

138. According to the Government, in 2015 and 2016, the Public Defender's office was the official partner of the public education campaign, the main objective of which was to raise awareness amongst the general public about unequal remuneration. Many public debates, lectures, discussions and round tables were held in all the Regions of the Czech Republic.

139. In 2015, the Public Defender of Rights initiated the drafting of a methodology intended for regional labour inspectorates, which aimed at helping to improve the efficiency of inspections in the area of equal pay for women and men. This methodology will be drafted as part of the project "22 % k rovnosti", the Office of the Public Defender of Rights being a key partner in the preparation of the methodology and in relation to the entire project.

140. Since 2009, the Public Defender of Rights only considered very few cases where women claimed discrimination related to remuneration.

141. The Government asserts that it can be concluded that given all the activities that the State authorities are undertaking in respect of equal pay for women and men and given the consistent and effective legal framework for protecting the right of the individual to fair remuneration for work of equal value, the Czech Republic is not in violation of the obligations arising from the applicable provisions of the Charter and the 1988 Additional Protocol.

## **B – Assessment of the Committee**

### *Recognition of the right to equal pay in legislation*

142. The Committee recalls that under Articles 4§3 of the 1961 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.

143. 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.

144. 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.

145. 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).

146. As regards the situation in the Czech Republic, the Committee considers that the principle of equal pay is recognised in the legislation. In particular, Article 110 of the Labour Code provides that all employees are entitled to receive equal pay for the same work or for work of equal value. The same work or work of equal value is defined

as work of the same or comparable complexity, responsibility and strenuousness. The work is performed under the same or comparable working conditions, involves equal or comparable work efficiency and produces equal or comparable work results. The Labour Code covers the basic principles and elements of remuneration, including the principle of equal pay. Section 5§1 of the Anti-Discrimination Act further defines the concept of equal pay, using the term remuneration, which “shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment”.

147. The Committee therefore considers that the obligation to recognise the right to equal pay for work of equal value in the legislation has been satisfied.

#### *Effective remedies*

148. 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.

149. 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.

150. 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).

151. 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.

152. As regards the Czech Republic, the Committee notes the low number of gender pay discrimination cases. It also notes the Government’s acknowledgement that the high costs of proceedings might dissuade individuals from claiming their equal pay rights before the courts. In this regard the Committee notes from the Concluding observations (2016) of the Committee on the Elimination of Discrimination against Women (CEDAW) that women often prefer out-of-court settlements owing to, inter alia, the burden of litigation and the difficulty of substantiating incidents of gender discrimination.

153. As regards access to courts, the Committee notes that in its submissions the Government also refers to the lack of confidence in the justice system as well as the threat of retaliation for pay discrimination victims as obstacles to claim their rights before the courts. It submits that it has taken steps to lower the cost of proceedings and to make available legal aid for those in need. The Committee notes that, according to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: the Czech Republic 2018, victims of gender discrimination can be assisted by legal entities in order to access the courts.

154. As regards the burden of proof and compensation for victims of pay discrimination, the Committee observes that the Anti-Discrimination Act provides for the shift in the burden of proof and that victims of discrimination can claim compensation both for pecuniary and non-pecuniary damage, for which the legislation sets no ceiling (Section 10 of the Anti-Discrimination Act). Moreover, the Labour Code (Article 346b§4) prohibits any retaliatory action against a worker for having claimed her/his rights.

155. The Committee observes that as regards the availability of effective remedies in cases of pay discrimination, victims can claim compensation for both material and moral damages, for which the legislation does not set any ceiling. In addition, the Government has reduced the costs of proceedings and made available legal aid. However, as the Government acknowledges, there are obstacles to ensuring effective remedies for victims of gender pay discrimination, such as lack of confidence in judicial system and fear of retaliation.

156. In view of the above, the Committee considers that despite the remaining obstacles and in particular taking into account the efforts deployed to address them, the obligation to ensure access to effective remedies has been satisfied.

#### *Pay transparency and job comparisons*

157. 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.

158. 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.



159. 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).

160. 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.

161. 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.

162. As regards pay transparency in the Czech Republic, the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: the Czech Republic 2018, that the domestic legislation or case law do not address pay transparency and that this represents a weakness of domestic law.

163. The Committee further notes from the above mentioned Country Report that the Czech Republic has not yet taken the necessary measures to ensure application of the Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

164. As regards the availability of information on pay levels, the Committee notes from the report submitted by the Czech Republic on Article 4§3 (2017) under the reporting procedure that data concerning remuneration are regarded as personal data in the Czech Republic and, as such, are protected against unauthorised disclosure by the constitutional protection provided for in Article 10 of the EU Charter of Fundamental Rights and Freedoms. Employers therefore are not entitled to publish pay data of their individual workers. An exception is the obligation to provide data for statistical purposes.

165. The Committee considers in this respect that the lack of pay transparency does not help shed light on the reasons for pay inequalities and may become a major obstacle for victims of pay discrimination to prove discrimination and thus effectively enforce their rights. Therefore, access to general statistics is not sufficient for an individual to identify a possible breach of the equal pay principle. In the context of judicial proceedings, it should be possible to request and obtain information on the pay of a fellow worker. The Committee considers that the situation of the Czech Republic is not compatible with the Charter in this respect.

166. The Committee notes that the legislation defines equal work or work of equal value, which provides the basis for job comparisons. The Committee also notes from the above-mentioned Country Report that a hypothetical comparator is permitted in national law as regards equal pay. The Committee considers that a hypothetical comparator, drawn from publicly available general statistics, may not alone serve to build a case of a breach of an individual right to equal pay.

167. As regards the scope of job comparisons, the Committee notes from the Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), concerning Convention No. 100 (2017) that the Labour Code limits the application of the principle of equal remuneration for work of equal value to workers employed by the same employer (Article 110§1). The CEACR notes that the Government continues to consider that the application of the principle to workers with different employers is not possible in practice.

168. In this connection, the Committee has already noted (Conclusions 2014, Article 4§3) that in the Czech Republic, job comparison is guaranteed only at the level of a single employer. The Government has argued (2013 report on Article 4§3 of the 1961 Charter in the framework of the reporting procedure) that the observance of the principle of equal pay for equal work or work of equal value across different employers in different socio-economic conditions and regions would seriously affect the elementary function of the wage, which is closely linked to the cost of living in the respective locality or region.

169. The Committee notes from the 2017 report of the Czech Republic on Article 4§3 of the 1961 Charter in the framework of the reporting procedure that comparison can be made between workers of employers whose pay conditions are regulated by the same regulation and where financing of the pay can be assigned to one source. According to the Government, an example of such an employer is the State, for whom equality of pay for women and men is guaranteed in the Labour Code, which defines uniform criteria for determining pay for all workers directly and in implementing

regulations, including a binding hierarchy to classify individual grades according to the level of education, experience or specialisation.

170. The Committee thus observes that where the State is the employer, the scope for job comparisons is not unduly restricted. However, as regards the scope of such comparisons in the private sector, it is restricted to a single enterprise and does not extend to companies owned by the same person or controlled by a holding or a conglomerate.

171. In view of the above, the Committee considers that the obligation to ensure pay transparency and enable job comparisons is not satisfied because of the lack of access to pay information and the impossibility of job comparisons across companies in the private sector.

#### *Equality bodies and other institutions*

172. 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.

173. 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.

174. 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.

175. 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.

176. The Committee notes that according to Act No. 349/1999 Coll. on the Public Defender of Rights, the Public Defender of Rights contributes to promoting the right to equal treatment of all persons and to this end, provides methodological assistance to victims of discrimination in lodging their proposals for the proceedings concerning discrimination. It also undertakes research, publishes reports and issues recommendations on discrimination-related issues.

177. In terms of the monitoring and decision-making functions assigned to it, the Committee notes from the above-mentioned Country Report that the Public Defender of Rights is not a judicial or quasi-judicial institution. It does not have the power to issue decisions that would be binding upon parties or impose sanctions. However, the body does have the competence to provide independent assistance to victims. Such assistance usually includes an analysis of the case that includes obtaining an opinion of the other party, and advice whether – according to the legal opinion of the Public Defender – discrimination has happened and what measures the victim can take. In addition, the Public Defender can provide the victim with guidance on how to enforce their rights and could refer the victim to lawyers specialising in the area of discrimination. The Committee notes that in 2017, the Public Defender registered 384 new complaints of discrimination, of which 12% related to gender. No figures are available on complaints relating specifically to equal pay.

178. Furthermore, as regards other functions within its mandate, the Committee observes that the Public Defender is empowered to act as a national preventive mechanism. The Committee notes in this respect that its role has been to raise awareness of the gender pay gap among all actors as well as to take part in the formulation of policies to address gender inequalities. The Public Defender itself considers that the gender pay gap is a serious problem. It closely monitors the activities of labour inspectors in the area of, among others, gender discrimination. According to the Government, the Public Defender of Rights is extensively involved in activities to raise public awareness (public debates, lectures, discussions and round tables), including the drafting of a methodology intended for regional labour inspectorates to

help improve the efficiency of the inspections in the area of equal pay for women and men. In 2016, the Public Defender took part in drafting the “EQUINET Handbook: How to build a case on equal pay”.

179. In conclusion, the Committee considers that the mandate of the Public Defender of Rights is sufficiently broad to monitor and promote equal treatment, including equal pay, especially by providing discrimination victims with the assistance and support they need. It is also engaged in raising awareness of equal pay issues across society.

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

#### *Concluding assessment*

181. Firstly, the Committee considers that there is an adequate legal basis for equal pay in the legislation.

182. Secondly, the Committee notes that the Anti-discrimination Act provides for the shift in the burden of proof and for compensation that is dissuasive *pro future*. Despite the fact that certain obstacles remain, the Committee considers that the right to effective remedies has been satisfied.

183. Thirdly, the Committee considers that the lack of pay transparency and the unduly restricted scope of job comparisons in the private sector render it difficult for victims of pay discrimination to prove discrimination and thus effectively enforce their rights. Therefore, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons has not been satisfied.

184. Finally, the Committee considers that the obligation to maintain an effective equality body has been satisfied.

185. The Committee holds that there is a violation of Articles 4§3 and Article 1.c of the 1988 Additional Protocol due to a lack of pay transparency and because job comparisons have not been sufficiently enabled.

## **II. ALLEGED VIOLATION OF ARTICLE 1.C OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY**

186. Article 1.c of the 1988 Additional Protocol reads as follows:

**Article 1 of the 1988 Additional Protocol – 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**

187. UWE refers to the Eurostat figures for the EU-28 concerning the overall gender earnings gap. It notes that in 2017 the gender pay gap in the Czech Republic stood at 49.5% whereas that of the EU at 37.4%. According to UWE, the indicator that the Government relies on (hourly earnings gap) does not show the wage inequalities relating to the fact that women are much more likely to be confined to part-time work than men. Therefore, the figure does not accurately convey the situation as regards pay discrimination.

188. UWE alleges that the respondent state merely refers to the applicable legislation and the major public policy exercises such as the various equality initiatives, vital to mobilising the various stakeholders. However, there is no sign of gender mainstreaming in the policies concerned, decision-making, access to resources, procedures and practices, methodology, implementation, monitoring or evaluation. There is no monitoring body and, above all, no checks are provided for or carried out. These are, according to UWE, significant shortcomings.

189. UWE argues that in designing the measures, no account is taken of many areas, for instance, the courses of study chosen by women, which all too often are non-scientific and unambitious, the greater number of vocational training courses of a higher standard available for men, the large number of benefits in kind for men and considerably fewer for women, horizontal and vertical segregation in employment, the centuries-old division of roles in the family, with no economic value being attached to the time spent on housework, forced part-time working, and failure to ensure proper work-life balance.

### **2. The respondent Government**

190. The Government states that it is a fact that in 2015, the gender pay gap amounted to 22.5% to the detriment of women. The difference between women’s and men’s average wages in 2016 amounted to 21.9% to the detriment of women.

191. Furthermore, according to the Government, as regards the difference between average wages of women and men it must be noted that this difference is not caused by direct pay-related discrimination (violation of the right to equal pay for equal work or work of equal value), but due to structural factors. In particular the horizontal segregation of the labour market comprises, *inter alia*, a high concentration of men or women in a specific sector of the labour market or in specific professions.

192. The Government points out that there are certain specific characteristics in the traditional representation of men and women in various sectors of the labour market, such as education and health and social care. These are sectors where the pay level is traditionally lower. On the other hand, in the sector of manufacturing the proportion of men is significantly higher. In 2015, average pay in the manufacturing sector amounted to CZK 26,857 which, according to the Government, is quite a high amount considering that the majority of posts in this sector are not so demanding as regards the workers' education.

193. According to the Government, the data on the average pay of women and men must be read in a wider context, taking into account the horizontal segregation of the labour market. Therefore, the Government believes that simple information about the average nominal pay of men and women in a given year, as argued by the complainant organisation, does not form any basis for comparing equal work or work of equal value. Such information can therefore, in no way, form a basis for a conclusion about pay discrimination against women.

194. In its submissions the Government rejects UWE's two allegations: firstly, the measures taken to achieve gender pay parity are ineffective and secondly, there is no gender mainstreaming in the policies, decision-making, access to resources, procedures and practices, methodology, implementation, monitoring or evaluation.

195. As regards the first allegation, the Government provides information about the Government Strategy for Equality of Women and Men in the Czech Republic for 2014–2020 (the Strategy). The Strategy is the main framework for application of the policy to support gender equality and it defines the question of gender equality as a societal priority. It defines nine strategic areas with goals that must be achieved by 2020, including gender equality in the labour market and in business where the gender pay gap is identified as one of the problems.

196. The Committee takes note of the activities implemented within the framework of a project entitled "22 % k rovnosti" (22% to Equality) by the Ministry of Labour and Social Affairs. This project is specifically intended to reduce the gender pay gap, to raise public awareness of the problem and its complexity, and to propose and verify innovative tools and policies to address the issue.

197. The activities implemented included research and analysis of the gender pay gap. Other planned outputs of the project include a methodology for regional labour inspectorates and for labour offices. The Public Defender of Rights actively participates in the preparation of the methodology and, being an observing party, pilot inspections of regional labour inspectorates.

198. The Government believes that differences between average wages of women and men are caused by a number of various structural factors. The Government has therefore adopted a number of measures to address those structural causes.

199. One of the structural causes accounting for the significant difference between average pay of women and men is men's low participation in the care for family. An amendment to Act no. 187/2006, on sickness insurance, introduced a new postnatal care allowance for fathers. The Government believes that the introduction of the postnatal care allowance for fathers will create room for men's participation in childcare and household tasks, and it will also allow the fathers to develop their parental competences while preserving the security of their employment and earnings.

200. Another structural measure to remove the gender pay gap is aimed at promoting work-life balance including the availability of childcare services. In this domain, the Ministry of Labour and Social Affairs supports in particular children groups and the so-called micro nurseries.

201. As regards the second allegation concerning gender mainstreaming, the framework for promoting gender equality at the governmental level is also represented by the Strategy. The evaluation of implementation of the Strategy is assessed in the Report on Gender Equality and Fulfillment of the Strategy for the past year, which is presented to the Government.

202. Moreover, according to the Government, the Recommendation of the Gender Equality Council of the Government Aiming at the Elimination of Obstacles and Creation of Conditions for Balanced Gender Representation in Decision-Making Positions ("the Initiative"), is a practical tool consisting of a set of measures for State authorities. The measures address the low representation of women in decision-making positions in State administration. Above all, by this resolution, the Government imposed an obligation on their members and heads of other central Government authorities from 30 June 2016 to endeavour to fulfil the measures aimed at gradually achieving 40% representation of both sexes at a particular management level or within a group of managers.

203. The Council is one of the Government's advisory bodies in the field of human rights; its chairperson is the member of the Government competent for gender equality



(currently the Minister of Justice). It identifies current issues in the field of gender equality in the society and evaluates and monitors measures taken to pursue gender equality.

204. As regards financial resources made available to implement measures, in response to the allegation by UWE that the available resources are scarce and not sufficient to promote equality, the Government states that the budget of CZK 85 million was allocated to the project “22% k rovnosti”.

205. Further to the subsidy programme of the Office of the Government of the Czech Republic, annually announced by the chairperson of the Council, entitled “Support of Publicly Beneficial Activities of NGOs in the Area of Gender Equality” its subsidy programme allocation for years 2014 and 2015 was CZK 5 million per year. For 2016 and 2017 the allocation was CZK 7 million per year.

206. Furthermore, the Ministry of Labour and Social Affairs carries out the subsidy programme *Family* in the long-term, supporting projects focusing on work-life balance. Allocation for this program was CZK 90.389 million in 2014, CZK 93.833 million in 2015, CZK 99.965 million in 2016, and CZK 96.5 million in 2017.

207. The Government further provides information concerning the on-going activities, such as preparation of a manual on salary negotiation for six target groups (e.g. mothers on maternal leave, women in pre-retirement age and women in low-pay occupations), including essential information on labour law and negotiation methods and options. Moreover, draft collective agreement provisions concerning equal treatment and remuneration are being prepared for distribution as well as guidance to setting up fair systems of remuneration and on decreasing of the gender pay gap through the use of collective bargaining and social dialogue.

208. The Government also refers to the future plans, such as an in-depth analysis of the actual difference in gender remuneration (quantitative and qualitative research), analysis of possible legislative measures leading to permanent reduction in the gender pay gap in specific conditions of the Czech Republic. An economic analysis for impact assessment of the difference in remuneration on the country’s economic growth (labour productivity, GDP) and the public budget (expenses on benefits, income from taxes) will also be carried out. The Action Plan on Reducing the Difference in Remuneration of Women and Men in the Czech Republic will contain a proposal for specific measures, including legislative changes for increasing transparency and reducing the difference, which will be carried out at the end of the project in 2020.

## **B – Assessment of the Committee**

### **a) Key figures as regards equal pay in the Czech Republic**

209. According to Eurostat, in 2016, women's gross hourly earnings in the Czech Republic were on average 21.8% below those of men. The Committee notes that the gender pay gap stood at 21.6% in 2010, 22.5% in 2015, 21.8% in 2016 and 21.1% in 2017. The Committee notes that the EU average in 2017 stood at 16.0%. The overall earnings gap in 2014 stood at 40.4%. The adjusted or “unexplained” gender pay gap is at 18.7% 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**

210. 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.

211. 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).

212. 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.

213. 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 (AIAE) v. France, Complaint No. 13/2002, op. cit., §53).

214. Under Article 1.c of the 1988 Additional Protocol to 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).

215. 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.

216. 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.

217. The Committee takes note of various measures to promote equality and to reduce the gender pay gap in the Czech Republic, such as the Strategy, Action Plans, subsidy programmes, projects, and initiatives that also involve the NGOs and the Labour Inspectorate. One of such measures has been the "22% k rovnosti" initiative, which has involved all the actors concerned. The Government has also taken steps to ensure gender mainstreaming in all its policies and actions. The Committee notes that some of these measures are still underway.

218. The Committee considers that the Government has maintained meaningful statistics, has introduced a variety of measures and has made financial resources available with a view to achieving the objective of reducing the gender pay gap. These measures were adapted to the findings of the research and studies conducted with a view to understanding the underlying causes of the gender pay gap. The Committee observes that the implementation of some of these measures (projects and the Strategy) is still on-going. The Government has also taken a commitment to undertake regular reviews of the impact of the measures introduced.

219. However, as regards the obligation to take measures within reasonable time and with measurable progress, the Committee notes that in the course of a seven-year period (2010-2017) no significant reduction in the gender pay gap was observed (from 21.6% in 2010 to 21.1% in 2017). The Committee thus considers that no real measurable progress has been achieved with respect to lowering the gender pay gap.

220. Therefore, the Committee holds that there is a violation of Article 1.c of the 1988 Additional Protocol on the ground that measures adopted have not led to sufficient measurable progress in reducing the gender pay gap.

### **III. ALLEGED VIOLATION OF ARTICLE 1.D OF THE 1988 ADDITIONAL PROTOCOL AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES**

221. Article 1.d of the 1988 Additional Protocol reads as follows:

**Article 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

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**

222. According to UWE the Czech Republic does not have a binding mechanism to foster representation of women on decision-making boards of companies. UWE refers to the statistical data provided by the ETUC, according to which in April 2016, the average share of women on boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3%. For the Czech Republic, the figure was 8.8%.

223. UWE further maintains that the respondent State does not address this issue, as indicated in its submissions. The Government only states that a position that may be comparable to a CEO would be a position of director general. Even so, this is impossible to monitor statistically using public sources, as the information on directors generals is not included in the Czech Commercial Register.

224. UWE also refers to an EU report, according to which in October 2016, just 7.7% of boards were chaired by women, and in six countries (Czech Republic, Denmark, Estonia, Luxembourg, Malta and Portugal) not one of the companies covered was chaired by a woman.

225. According to UWE, the under-representation of women in decision-making positions is proven. This discrimination is established and is contrary to the Czech Republic's various undertakings in this respect. The Czech Republic violates the Social Charter due to the under-representation of women in decision-making positions in companies.

## **2. The respondent Government**

226. The Government argues that the obligations of the State as the duty bearer under international human rights law cannot require interference with the private sector that would go beyond the legitimate legal framework and be contrary to the principles of a liberal democratic state governed by the rule of law. The underrepresentation of women in decision-making positions in private companies cannot be, for example, assimilated to the State's failure in its duty to inspect the private sector or practices that are unlawful at national level or *prima facie* in contravention of the international obligations of the State.

227. Nevertheless, the Government submits its observations as regards this allegation, in particular with a view to refuting UWE's assertion that the Czech Republic is not taking any measures in this matter.

228. The Government submits that UWE has not offered any proof to support its claims that there are no women CEOs in the largest commercial companies in the Czech Republic. As it would be difficult to find a genuine equivalent to the position of CEO in the business environment of the Czech Republic, supporting such an allegation would be overly simplifying the matter. A position that may be comparable with a CEO would be a position of *director general* [*generální ředitel/ka*] which, however, is impossible to monitor statistically using public sources. The information on director generals is not included in the Czech Commercial Register. Therefore, the complainant organisation's statement that the situation in the Czech Republic is insufficient is rather misleading.

229. According to the European Institute for Gender Equality (EIGE) the representation of women in the top management of the largest listed companies in the Czech Republic stands at 7%, while women accounted for 17.1% of the members of the wider managements of the largest listed companies in the Czech Republic. Over 37% of supervisory board members and over 17% of members of management boards of public limited companies were women.

230. In the 250 largest Czech commercial companies, women accounted for 12.5% of the members of all governing bodies. The share of female company directors in private limited companies was 21.6%.

231. Increasing the representation of women in decision-making positions has also been one of the priorities in the area of gender equality. In this matter the Government's Strategy stated several specifically formulated objectives. The main objective is to achieve a minimum level of 40% representation of women in decision-making positions in the public and private sectors.

232. The Government also approved their Action Plan for Equal Representation of Women and Men in Decision-making Positions for the period from 2015 to 2018 (the "Action Plan") in July 2016. The Action Plan constitutes a comprehensive strategic document at the level of the Government of the Czech Republic, focusing specifically on this area. The document describes the current situation regarding the representation of women and men in decision-making positions in the Czech Republic, including obstacles hindering the balanced representation of women and men in this area.

233. According to the Government, in terms of the promotion of a balanced representation of women and men in decision-making positions in private commercial companies, the Action Plan sets out a number of measures. Among these, the Committee notes the plan to increase the number of women on supervisory boards and boards of directors in commercial companies with state participation with the aim of gradually achieving the minimum 40% level of representation in these bodies by 2020 through the adoption of numerous specific measures.

234. In terms of the requirement of 40% representation of both sexes in decision-making positions, other central Governmental authorities subject to this obligation have been more or less working towards fulfilling this target. Some authorities have even already provided data on balanced gender representation within their management (i.e. Czech Telecommunication Office, Council for Radio and Television Broadcasting, Industrial Property Office, State Administration of Land Surveying and Cadastre, and State Office for Nuclear Safety). It can also be said that all other central government authorities indicated that they have been using at least some measures to fulfil the Initiative.

## **B – Assessment of the Committee**

235. The Committee considers that Article 1.d of the 1988 Additional Protocol imposes, as Article 20.d of the Revised Charter, 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).

236. 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%.

237. Finally, the Committee recalls that in respect of Article 1.d of the 1988 Additional Protocol, as for Article 1.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.

238. The Committee notes that the measures taken by the Government to promote the representation of women in decision-making positions of private companies has not included introduction of a binding regulation. However, the Government has set as its objective to achieve a minimum level of 40% representation of women in decision-making positions in the public and private sectors.

239. The Committee notes in this regard, nevertheless, that according to the European Institute for Gender Equality (EIGE) in 2010 there were 12.2% of women on boards of largest listed companies and 10.1% in 2016, whereas the EU average stood at 23.3%. In 2017 the figure for the Czech Republic stood at 14.5% and for the EU at 25.3%. In 2019 these figures stood at 18.5% and 27.8% respectively. The Committee considers that despite the progress made in promoting the representation of women in decision-making positions in private companies, the latter remains low and therefore the measures that have already been implemented have not been sufficient.

240. Therefore, the Committee holds that there is a violation of Article 1.d of the 1988 Additional Protocol.

#### **IV. REQUEST FOR COMPENSATION**

241. 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.

242. 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 4§3 and Article 1.c of the 1988 Additional Protocol as regards recognition of the right to equal pay in the legislation;
  - by 12 votes to 3, that there is no violation of Article 4§3 and Article 1.c of the 1988 Additional Protocol as regards access to effective remedies;
  - unanimously, that there is a violation of Article 4§3 and Article 1.c of the 1988 Additional Protocol on the ground that pay transparency is not ensured and job comparisons are not enabled in practice;
  - by 13 votes to 2, that there is no violation of Article 4§3 and Article 1.c of the 1988 Additional Protocol as regards equality bodies;
  
- unanimously, that there is a violation of Article 1.c of the 1988 Additional Protocol on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
  
- by 14 votes to 1, that there is a violation of Article 1.d of the 1988 Additional Protocol on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies.



Kristine DUPATE  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN Deputy  
Executive Secretary