



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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Czech Republic
Complaint No 128/2016

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

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 128 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

Represented by Ms Anne Nègre, member of the Versailles Bar
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Respondent: Czech Republic

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 4 November 2016, the High Contracting Party, the Czech Republic, represented by Ms Zuzana Zajorošová, Agent of the Czech government, Director of the EU and International Co-operation Department, Ministry of Labour and Social Affairs, stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

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

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

1. On the submission of documents referred to by the Czech Republic

In paragraph II a. of its observations, the Czech Republic refers to Rule 23 §2 of the Rules of the European Committee of Social Rights which provides that the "*complaint shall be signed by the person(s) with the competence to represent the complainant organisation*".

However, on 24 August 2016, in view of their importance, the documents relating to the collective complaint were sent several times electronically to the Secretariat of the Social Charter:

1. In an initial mail dated 24 August 2016 at 4.14 pm (Doc. 73) containing:
 - A letter dated 24 August 2016 to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe
 - The collective complaint with the list of documents,
 - A document forwarding slip
 - A copy of Anne Nègre's professional barrister's card
2. In a second mail dated 24 August 2016 at 5.03 pm (Doc. 74):
 - Docs. 1 to 9/2
3. By the *we transfer* system on 24 August 2016 (Doc. 76):
 - The remaining supporting documents.

Accordingly, all the documents were forwarded on 24 August 2016 electronically in accordance with the instructions on the European Social Charter website. The secretariat of the Social

Charter confirmed receipt of the above by mail dated 31 August 2016 referring specifically to the “emails of 24 August 2016 (Doc. 75). Docs 76 to 79 are submitted for examination.

It has therefore been shown that the Secretariat of the Social Charter had received all the documents relating to the complaint. Accordingly, the Czech Republic cannot claim that the UWE’s complaint is inadmissible on this ground as the UWE complied with the requirements laid down.

2. On the terms of reference referred to by the Czech Republic

Pursuant to Article 18 of the UWE Constitution, “*The Assembly will be represented in legal actions both as plaintiff and as defendant by the president and one member of the Board designated to that effect by the Assembly*”.

The instructions enclosed herewith, as issued to Ms Anne Nègre, member of the Versailles Bar, were duly signed by Édith Lommerse, President of the UWE and Roxana Petrescu, UWE Secretary.

It appears:

- In French in Doc. 9/1
- In English in Doc. 9/2

I also forwarded copies of the identity documents of Ms Édith Lommerse, UWE President and Ms Roxana Petrescu, UWE Secretary. These two versions of the instructions are being resubmitted herewith. The Czech Republic acknowledges receipt of the documents, albeit belatedly. The UWE fully complied with the obligations of Rule 23 of the Rules. The UWE is therefore competent to act.

3. On the UWE’s standing

Article 3 of the Additional Protocol of 1995 provides that “The international non-governmental organisations and the national non-governmental organisations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence”.

The established case law of the European Committee of Social Rights has consistently acknowledged the standing of INGOs, some of which specialise in human rights issues (Equal Rights Trust v. Bulgaria, Complaint No. 121/2016; Greek General Confederation of Labour v. Greece, Complaint No. 111/2014; FIDH v. Ireland, Complaint No. 110/2014; Médecins du Monde International v. France, Complaint No. 67/2011; Quaker Council for European Affairs v. Greece, Complaint No. 8/2000; Defence for Children International v. The Netherlands, Complaint No. 47/2008).

In point of fact, this article relates solely to the competence of an INGO. It has already been demonstrated in the complaint against the Czech Republic that the UWE is eminently qualified

to submit a collective complaint in respect of violations of the Social Charter relating to the failure to comply with its provisions on equal pay for equal work between women and men.

Is the Czech Republic claiming that the UWE does not have standing? Surely, the UWE is eminently qualified to be concerned about equal pay between women and men for equal work. If this organisation is not qualified, then no women's organisation is.

Paragraph 2 of Article 2 of the UWE Constitution states the following: *“To promote action consistent with the purpose of IFUW by encouraging co-operation between its European members at various levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the programme of IFUW”*.

“To participate in the progressive development of European Civil Society, by working to achieve the programmes of the Council of Europe and the European Women's Lobby and other European governmental and non-governmental organisations as is deemed appropriate by the aims and programmes of UWE”.

This same article also states that the *“UWE/GEF DU is a regional group of IFUW, has participative NGO status with the Council of Europe and is a member of the European Women's Lobby”*.

In the light of these explanations, the UWE is eminently qualified. Following on from this Article 2 of the UWE Constitution, the social purpose of the IFUW, now the GWI further enhances the UWE's competence, as indicated in the collective complaint, with a reference to the address of the headquarters and website of this INGO. But they are two different legal persons (Doc. 80, 81).

Article 1 of the GWI Constitution defines its social purpose as follows:

- education for women and girls;
- promote international co-operation, friendship, peace and respect for human rights for all, irrespective of their age, race, nationality, religion, political opinion, gender and sexual orientation or other status;
- advocate for the advancement of the status of women and girls; and
- encourage and enable women and girls to apply their knowledge and skills in leadership and decision-making in all forms of public and private life.

Subsequently amended, with effect from 26 August 2016, in very similar terms:

- promote lifelong education to the highest levels for women and girls;
- encourage and enable women and girls to apply their knowledge and skills in leadership and decision-making in all forms of public and private life;
- advocate for the advancement of the status of women and girls; and
- promote international co-operation, friendship, peace and respect for human rights for all, irrespective of their age, ethnicity, nationality, religion, political opinion, gender and sexual orientation or other status.

Reference should also be made to Article 3, paragraph 1 “Academic requirements for

membership: *The requirements for individual membership in a national federation or association and for independent members shall be study at a recognised institution of higher education followed by the award of a degree, diploma or equivalent qualification*".

In the instant case,

- **With regard to point c of the Czech Republic's observations:** the UWE alone has submitted this complaint. The GWI, the successor to IFUW, is absolutely not a complainant organisation.
- **With regard to point b of the Czech Republic's observations:** the ECSR will note that the direct social purpose demonstrates the UWE's competence to submit this collective complaint. The indirect social purpose of the GWI strengthens this competence, if such were necessary.

The natural persons, members of these associations are women graduates who believe that the emancipation of women will also come about through education and training, to enable them to be in better position to take part in these various struggles, such as equal pay for women and men for the same work.

Since 1919, women from all backgrounds working in a wide range of fields in the private and public sectors have come together to obtain their fundamental rights, which include equal pay. Very often they are lawyers, law lecturers, faculty deans, CEOs, engineers, doctors, architects, accountants, trade unionists, women in leadership posts, elected representatives, etc. or quite simply employees in the private and public sector. More than 9,000 women in Europe in this movement are unanimous in their outrage at not having equal pay for doing the same work as their male colleagues.

Gender equality is a major focus of the Council of Europe's strategy in 2017 with equal pay a key concern, as it is for the European Women's Lobby. This is one of the major issues being fought for in Europe, as amply demonstrated by the various demonstrations and strikes by women on 8 March 2017 throughout Europe. The UWE, through this collective complaint against the Czech Republic, is therefore acting entirely consistently with its Constitution, using its capacities and aptitudes to bring this complaint before the European Committee of Social Rights.

Furthermore, the UWE is, and always has been, a member of the board of administration of the European Women's Lobby, and is represented on its Bureau, as the Treasurer is a UWE member. In addition, national NGOs which are UWE members belong to the national co-ordinations of the European Women's Lobby.

The excellence of the teams of representatives in various places is well-known and acknowledged; the contributions from national associations, alone or acting in co-operation, have led to clear progress in the fundamental rights of women, and equal pay is one of the key areas of action in various European countries.

The work carried out without interruption since 1983 with the Council of Europe has enabled the UWE to be given continual accreditation and then authorisation to lodge collective complaints of violations of the European Social Charter. Evidence of this has been amply submitted.

It should also be noted that other states against which this collective complaint has been lodged in relation to this same violation do not in any way challenge the standing of the UWE.

Furthermore, on 29 January 2015 the Conference of INGOs, one of the pillars of the Council of Europe quadrilogue, alongside the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities elected a UWE member as gender equality expert for a three-year term of office.

As such, this gender equality expert takes part in numerous Council of Europe equality-related activities in the various committees, including the Equality Committee, and also in working groups drafting practical tools for states, and recommendations or resolutions for the Committee of Ministers. This is a further demonstration of the UWE's expertise.

It would be paradoxical for the UWE to be regarded as an INGO that is particularly qualified to take part in the Council of Europe's work on equality issues, including the question of equal pay for equal work, and then for the European Committee of Social Rights to declare its complaint inadmissible through lack of standing.

The UWE's complaint should therefore be declared admissible.

4. On the relevance and detail of the arguments submitted

Pursuant to Article 4 of the Protocol *“The Complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision».*

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

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

There could be a case for inadmissibility if the signed and ratified texts of the corpus of the European Social Charter on which the alleged violation is based had not been cited. But certainly not in this case.

In point of fact, the collective complaint states that “the European Social Charter came into force on 1 July 1999. The Czech Republic signed it on 27 May 1992 and ratified it on 3 November 1999. It came into force in the country on 3 December 1999. The revised Social Charter of 3 May 1996 (Docs. 63 and 46) was signed by the Czech Republic on 4 November 2000” (complaint Page 1 § 2 and 3).

It is also alleged that there has been a violation of the European Social Charter itself and the provisions on compliance with the principle of equal pay for equal work, and the provisions of the 1988 Protocol. Is it necessary to point out that paragraph 4 of Part I states that “*All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families*”, and that Article 4 of Part II on the right to a fair remuneration states, with greater precision in paragraph 3, that Contracting Parties undertake “*to recognise the right of men and women workers to equal pay for work of equal value*”.

Clearly, the texts referred to in the collective complaint apply to the Czech Republic.

Accordingly, the Czech Republic’s observation cannot be accepted as justification to declare the UWE’s complaint inadmissible. The European Committee of Social Rights must declare the UWE’s complaint admissible. Moreover, several documents refer directly or indirectly to the texts of this country, in particular documents 43, 44, 45, 46, 47, 48, 66, 73, 74 and 75.

The collective complaint is substantiated by the following: “*The various legal provisions are shown in the report on the Czech Republic (Doc. 44) and on the ILO NATLEX database (Doc. 35).*”

The 1993 Czech Constitution prohibits discrimination based on sex, but there do not appear to be any provisions on equality between women and men. Equal treatment of women and men is guaranteed by the country’s anti-discrimination legislation (Doc. 44):

- *Law No. 198 of 2009 on Equal Treatment and Legal Protection Against Discrimination (Doc. 75)*
- *Law No. 262 of 2006: the Labour Code (Doc. 74)*
- *Law No. 5 of 2004 on Employment*
- *Law No. 349 of 1999 on the Public Defender of Rights (Doc. 73)*
- *Government Resolution 2001 No. 1033 on the establishment of a Government Council for equal opportunities for women*

Article 110 of the Labour Code lays down the principle of equal pay for equal or comparable work. However, there are no statistical comparisons or any real transparency (Doc. 49, pages 15 and 16).

Gender mainstreaming comes under the auspices of the gender equality unit of the Office of the Government. It formulates, drafts and assesses possible developments and proposed changes to legislation concerned with equal opportunities for women and men. It also acts as national coordinator of policies on gender equality, and provides the secretariat for the Government council on equal opportunities for women and men.

Since 1998, the basic strategic document in this field has been the National Equality Plan. Gender mainstreaming was formally integrated into the plan in 2001; it is drawn up each year and comprises a report on implementation of the relevant policies and priorities over the previous year and a list of tasks for the various ministries.

Moreover, since 2001, each ministry has been required to appoint an equality officer (Doc. 45).

A gender equality strategy has been adopted for the period 2014-2020, but it contains no aims and objectives concerned with increasing female participation in company decision making or in elections for public office.”

✓ Page 23 of the complaint refers, for example, to the EU’s median index which stands at 52.9 whereas that of the Czech Republic is 43.8 (Doc. 26, <http://eige.europa.eu/gender-statistics/gender-equality-index>). How does this country explain such a disparity?

It is the country’s responsibility if there is no data comparison mechanism (Doc. 44).

On page 25 of the complaint, there was ample demonstration of this inequality in 2016, based on the CEDAW Committee’s observations on the 6th report. The Committee “*expressed concern that the Convention was insufficiently known in the country, which had no clear framework for the functioning of the national machinery for the advancement of women. It was also concerned about the situation regarding women’s pay:*

“The Committee is concerned about the slow progress made during the reporting period. It notes the reduction in the very wide gender pay gap in the State party, but remains concerned about: (a) The low employment rate of women, horizontal and vertical segregation in the labour market, the concentration of women in traditionally female-dominated professions and in the informal sector, and their underrepresentation in managerial and decision-making positions; (b) The continued gender wage gap of approximately 21 per cent” (Doc. 40, page 7).

The Committee stressed the need for the principle of equal work for equal pay to be clearly defined (Doc. 40, page 8).

What else can be said? That the tasks assigned to the monitoring bodies are inadequate in view of the inequality that exists (complaint, page 18). There are numerous examples cited in the complaint relating to the situation in law and in practice. The Czech Republic’s claim that there was a lack of precise information is no doubt due to the delay in forwarding the documents. But to claim that a country was not in a situation of “equality of arms” in respect of an INGO in this collective complaint, is to accord great credit to the UWE.

Concerning the number of collective complaints and consultation among states

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

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

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

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

The UWE’s complaint should therefore be declared admissible

ON THESE GROUNDS

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

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

and to examine this collective complaint on the merits.

Without prejudice
19 March 2017

A handwritten signature in black ink, appearing to read "Anne Megret". The signature is written in a cursive, flowing style.

ADDITIONAL DOCUMENTATION

76. 24 August 2016, first mail from Anne Nègre to the Social Charter secretariat
77. 24 August 2016, second mail from Anne Nègre to the Social Charter secretariat
78. 31 August 2016, acknowledgment mail from the Social Charter secretariat
79. 24 August 2016, forwarding of documents
80. May 2016, Constitution and Rules of Procedure of Graduate Women International, GWI
81. 26 August 2016, Constitution and Rules of Procedure of GWI