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

16 April 2018

Case Document No. 8

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

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

Registered at the Secretariat on 30 March 2018



Mr Giuseppe Palmisano
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European Committee of Social Rights
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Council of Europe
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File. No. 69/2017/DIS/DKR
Ref. No. KVOP-33082/2017
Date 21 November 2017

Dear Mr Palmisano,

I am writing to you in relation to the collective complaint of 15 November 2016 filed by the University Women of Europe (UWE) against the Czech Republic (No. 128/2016).

On 31 August 2017, the Ministry of Justice of the Czech Republic asked me to provide my statement on the collective complaint. The Complainant states that the activities of the Public Defender of Rights, who was bestowed with the role of the national equality body in 2009, are insufficient in the matter of equal pay and representation of women in managerial positions. I provided my opinion on the collective complaint of the UWE to the Ministry on 27 September 2017.

Pursuant to Section 21b (d) of the Public Defender of Rights Act¹, I contribute to promotion of the right to equal treatment of all persons regardless of their gender, and to this end, I provide for exchange of the available information with the relevant European entities. I also include the European Committee of Social Rights amongst these entities. I exercise my mandate independently of the steps of the Government of the Czech Republic. That is why I decided to send my complete opinion, which I provided to the Ministry of Justice, to the European Committee of Social Rights. Indeed, the Government's opinion on this matter does not include some of my critical reproaches.

Should any members of the European Committee of Social Rights have any questions regarding my opinion, I am prepared to respond, and to provide the necessary co-operation.

Sincerely,

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this letter bears electronic signature)

Attachment

English translation of a letter of 27 September 2017 (ref. No. KVOP-27174/2017)

¹ Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.



Your Ref. MSP-4/2017-KVZ-OZ/14
File No. 69/2017/DIS/DKR
Ref. No. KVOP-27174/2017
Date 27 September 2017

JUDr. Vít Alexander Schorm
Government Agent
Office of the Government Agent of the
Czech Republic before the European Court
of Human Rights
Ministry of Justice
Vyšehradská 16
128 10 Prague 2
kvz@msp.justice.cz

Dear Mr Schorm,

I am writing to you in response to your request for my statement on the collective complaint of the University Women of Europe (UWE) against the Czech Republic currently dealt with by the European Committee of Social Rights.

Unequal pay

Gender pay gap is a real problem in the Czech Republic. Statistical data shows one of the widest gender pay gaps in Europe. According to the Ministry of Labour and Social Affairs, the current gender pay gap is 22.5%. I will start with describing the activities of the Defender in this area, and then I will evaluate the approach of the State Labour Inspectorate to date.

Public Defender of Rights

When it comes to helping women who are discriminated against in terms of pay, we have only dealt with several cases since 2009.¹ It is typical of this area that the victims of such discrimination do not enforce their rights. I described the causes and consequences of not reporting discrimination (underreporting) in my 2015 survey report.² A total of 11% of the respondents felt they have been discriminated against or harassed in the past 5 years. The vast majority of the persons concerned never complained, citing lack of trust in governmental institutions, lack of evidence and lack of information as the main obstacles. Apart from that, embarrassment and fear of retaliation were also mentioned as discouraging factors. Experts from amongst judges and governmental officials referred to various measures which could help to remove such obstacles, including the adoption of a law on free legal aid, providing the Defender with the competence to lodge a public action and continued education of judges and attorneys-at-law in the field of anti-discrimination law. The research also showed that even where acts of discrimination are penalised by the

1 Cases publicly available in the Defender's Opinions Register at <http://eso.ochrance.cz/Vyhledavani/Search>. The case that was spotlighted the most in the media is the case of head physician in Boskovice hospital; this case, however, did not have any legal repercussions. See the Defender's letter (File No.89/2012/DIS) available at <http://eso.ochrance.cz/Nalezene/Edit/1918>.

2 The Czech version of the report available at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_CZ_fin.pdf, the English version at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_EN_fin.pdf.

competent authorities,³ the penalties do not have a deterrent effect due to the amounts imposed.

I dare estimate that unless both legislative and non-legislative recommendations given in my survey report (pages 138-141) are implemented, we cannot expect any improvements of the situation of discriminated people (including women discriminated against in terms of pay).

Since 2014, we at the Office of the Public Defender of Rights (hereinafter the Office) have been dealing with the issue of unequal pay mostly by awareness-raising activities, both nationally and internationally.

In 2015 and 2016, we were an official partner of the Mind the Gap! project⁴, whose main aim was to raise public awareness of the gender pay gap issue. The lawyers with the equal treatment department along with the experts from GIC NORA, o. p. s. organised debates with public, students of secondary schools, and social partners (employers, unions etc.). An international conference was held on this matter in January 2016.⁵ Also in 2016, we participated in preparing a position paper on the gender pay gap in the Czech Republic, which we published and sent to important authorities and institutions.⁶

As a part of our long-term co-operation with central, supervisory and inspection bodies, we discussed the issue of gender pay gap at two round table meetings "Together against Discrimination". The round tables were held on 26 February 2014 and 23 May 2017.

In 2015, we recommended that the Minister of Labour and Social Affairs issue a methodology for the District Labour Inspectorate. The methodology should help carry out effective inspections of equal remuneration of women and men by both public and private employers. The Minister complied with the recommendation. Therefore, the Office is currently a part of the system project of the Ministry of Labour and Social Affairs called "22% to Equality"⁷. The objective of the project is 1) to begin the process of reducing the gender pay gap in the Czech Republic, and 2) 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.

We have also addressed the issue of unequal pay in the European Network of Equality Bodies (Equinet). In 2016, we participated in creating the "Equinet Handbook: How to

3 Which is very rare in cases of discrimination in remuneration.

4 <https://www.jetofer.cz/>.

5 The collection in available in Czech at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Sbornik_NORA_CZ.pdf, and in English at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Sbornik_NORA_AJ.pdf.

6 Position Document available at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Nerovne_odmenovani/Pozicni_dokument_web.pdf.

7 <http://www.rovnaodmena.cz/>.

build a case on equal pay“.⁸ In September 2017, we co-organised an international workshop in Brno, focused on how the European authorities for equal treatment should proceed when dealing with complaints on gender pay gap.⁹ We will use the lessons learned from the international co-operation at a seminar called “Unequal pay – How to Win a Court Case “ held on 4 October 2017, which we will co-organise with the Pro Bono Alliance, and which will be attended by lawyers and non-profit organisations.

Finally, we 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. The recommendation had not been complied with when I wrote this letter.

State Labour Inspectorate

The State Labour Inspectorate and the District Labour Inspectorates are administrative authorities that I review regularly.¹⁰ I believe that the main shortcomings in the inspection of equal pay between women and men are as follows:

- It is not clear how the inspectorates determine the sample of the employees checked during inspections (in terms of the sample size and method of choosing them), which method they choose (according to which model / formula the total resulting inequality was calculated; which factors influencing the amount of the remuneration were taken into account; and what the basis was of the assumption that the resulting inequality is caused by discrimination).
- In the past, the inspectorates investigated whether the pay gap (if they found there was a pay gap) was motivated by the employees’ gender. Such a view is not based on the applicable law. In administrative criminal law, infringement of the principle of equal pay falls under strict liability. The employer’s culpability, motivation and incentives play no role, and should not even be considered by the inspectorate.
- As one of the possible obstacles to equal pay for men and women, the inspectorates mention the principle of contractual freedom. I believe that the inspectorates cannot accept such an argument from the employers as reasonable and legal justification of unequal pay because it is not possible to waive a mandatory principle (right to equal treatment in remuneration based on gender) on the basis of one's own decision or agreement with the employer.
- The Labour Inspectorates are still unable to examine possible indirect discrimination by the employer based on gender. They are even unable to determine whether work is of the same value.

I acquainted the State Labour Inspectorate with these reservations in May 2017. I also view the issue realistically and in context, and am aware that inspections carried out by the inspectorates are not the ultimate solution, and that they will only react to a very

8 Available at: <http://www.equineteurope.org/Equinet-Handbook-How-to-build-a-case-on-equal-pay>.

9 More details at: <http://www.equineteurope.org/Training-How-to-build-a-case-on-equal-pay>.

10 For more details see https://www.ochrance.cz/fileadmin/user_upload/Publikace/sborniky_stanoviska/Sbornik_Kontrolni-organy.pdf.

limited part of the whole phenomenon of gender pay gap. However, that should not prevent the State Labour Inspectorate from exercising the competence entrusted to it by law consistently and carefully.

Low share of women in managerial positions in private companies

The Office has not examined the issue of low share of women in managerial positions in private companies in detail in the past several years. We only took part in a study trip to Norway organised by the Business for Society platform¹¹ within the “Women on Board” project. This platform could (should you be interested) provide you with more information regarding their activities.¹²

I have come across the issue of representation of women in a specific organisation only once, when assessing the right to stand as a candidate at elections to the Czech Bar Association bodies.¹³ I recommended that the Czech Bar Association internally promote that the ratio of men and women in the bodies of this self-governing organisation be more balanced, and give more support to women to stand as a candidate, even though there is no legal regulation that would require professional chambers and any other bodies (whether they are public authorities or private entities) to have balanced representation of men and women.

Conclusion

Dear Mr Schorm, despite having accepted strategies and action plans, the procedure of the Czech Republic in the two selected issues of gender equality has been very slow and the reactions of politicians to a great extent uninformed. Within society, we are able to reach consensus on our common goal (not discriminating against women), but not on the means that could lead to its achievement. I have no doubt that further efforts are needed to remove the persisting issue of unequal position of women and men, which I consider to be a serious problem.

However, the Public Defender of Rights does not have enough capacity to address these issues (there are ten full time employees that need to deal with all the grounds of discrimination, not just gender – and the number of complaints increases every year¹⁴). Even if the number of discriminatory cases increased due the awareness-raising activities, we cannot represent the individuals in court.

The State Labour Inspectorate did not address the issue of remuneration with the required intensity, and is now, after two years, trying to catch up with what could have been done a long time ago. The State Labour Inspectorate must approach this issue as a priority. Only then will it be possible to implement the basic principles of equal treatment between men and women in workplace to practice, after several years of generally accepted feeling of “impunity”.

11 <http://byznysprospolecnost.cz/>.

12 <http://diverzita.cz/index-zastoupeni-zen-ve-vedeni-2017-dosahl-u-ceskych-top-250-firem-125/>.

13 The report is recorded under file No. 3448/2016/VOP.

14 See Summary Report on Protection Against Discrimination for 2016 at https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocn_i_zpravy/2016-DIS-vyrocn_i-zprava.pdf.

I hope I provided some valuable information. Should you need anything else, you can contact Mgr. Dagmar Krišová, the guarantor for equal opportunities for women and men (tel.: 542 542 253, e-mail: krisova@ochrance.cz).

Sincerely,

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this letter bears electronic signature)