

DECISION ON ADMISSIBILITY

4 July 2017

University Women of Europe v. Finland

Complaint No. 129/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 293rd session in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 24 August 2016 as number 129/2016, lodged by University Women of Europe (“UWE”) and signed by Ms Anne Nègre, a lawyer appointed by the President of UWE, Ms Edith Lommerse, requesting the Committee to find that the situation in Finland is not in conformity with Articles 1, 4, 4§3 and 20 of the Revised European Social Charter (“the Charter”), read alone or in conjunction with Article E, as well as with the 1961 Charter and Article 1 of the 1988 Additional Protocol; the complaint was notified to the Government of Finland (“the Government”) on 27 September 2016;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government on the admissibility of the complaint registered on 15 December 2016;

Having regard to the response submitted by UWE to the Government's observations on 20 March 2017;

Having regard to the additional observations of the Government registered on 19 May 2017;

Having regard to the Charter, and in particular to Articles 1, 4§2, 4§3, 4§5, 20 and E, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

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:

- (...)
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
- (...)
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

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 20 – 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:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.”

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 4 July 2017;

Delivers the following decision, adopted on the above-mentioned date:

1. UWE alleges that the situation in Finland constitutes a violation of Articles 1, 4, 4§3 and 20 of the Charter, read alone or in conjunction with Article E, as well as the 1961 Charter and Article 1 of the 1988 Additional Protocol. UWE invokes the following grounds:

- a) The first concerns the wage gap between men and women in Finland, which still persists and is unfavorable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation enacted in this area. In this respect, UWE also alleges that, in practice, the bodies which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfill their task in fighting discrimination, thus rendering existing legislation ineffective. UWE cites the work in particular of the Ombudsman and the labour inspectorate;
- b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies; the percentage of

women at head of an enterprise is 4.3%, and 29.2% is the percentage of women present in boards of big enterprises.

2. In its observations, the Government objects to the admissibility of the complaint. It argues in particular that UWE is a network of federations whose objectives are to deal with issues concerning the academic life of women. UWE justifies its competences referring to the statutes of the International Federation of University Women (IFUW), which since 2015 has become Graduate Women University (GWU). The Government considers therefore that UWE's competence in the field of the wage gap between men and women is not proven. Moreover, the Government considers the complaint very vague, general and not sufficiently grounded. Finally, the Government underlines that the complaint seems to be an alternative rather than a complement to the reporting procedure. As complaints have been lodged against all other 14 States Parties having accepted the complaints procedure, according to the Government it is difficult to establish whether UWE's goal is to defend all women in Europe. For these reasons, the complaint appears to be more of a political manifesto than a legal complaint.

3. In its response to the Government's objections, UWE states that it is on the list of organisations which can lodge a complaint before the Committee, including on discrimination issues in the labour market field. UWE further refers to the Statutes of IFUW. UWE states that the complaint addresses the situation in Finland, by referring to legislation and reports concerning Finland, which point to violations as regards the wage gap between men and women, the absence of implementation of adequate mechanisms and the lack of measures ensuring a balanced representation of women in administration boards of private enterprises. The complaint therefore specifically addresses Finland and assesses the wage inequality between men and women from a legal perspective, based on legal and factual elements, and it is not a political manifesto.

4. In its additional observations, the Government acknowledges that IFUW's Statutes and Constitution are joined to the complaint, but states that IFUW is not included on the list of organisations with competence to lodge a complaint before the Committee. IFUW's statutes cannot be considered as having any relevance for UWE's competence and are not useful for the assessment of the admissibility of the complaint. Moreover, UWE's Statutes simply states that UWE is part of IFUW, but this does not have any bearing on UWE's competence.

THE LAW

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Finland on 17 July 1998 and entered into force for this State on 1 September 1998, the complaint has been submitted in writing and concerns Articles 1, 4, in particular 4§3, and 20 of the Charter, provisions accepted by Finland when it ratified the Charter on 21 June 2002, as well as Article E. Finland is bound by these provisions since the entry into force of the treaty in its respect on 1 August 2002. The Committee observes that UWE also refers to the 1961 Charter and to Article 1 of the 1988 Additional Protocol, as well as to all paragraphs of Article 4 of the Charter. However, Finland has only accepted paragraphs 2, 3 and 5 of Article 4.

The Committee recalls that only the accepted provisions of the Charter are applicable.

6. The Government raises several objections concerning the grounds of the complaint, notably that the complaint is very vague, general and not substantiated enough (see §§2 and 4 above).

7. As regards the first ground, concerning the wage gap between men and women for equal, similar or comparable work, UWE alleges specifically the violation by Finland of Article 4§3 and Article 20 of the Charter. Article 4§3 guarantees of men and women workers to equal pay for work of equal value. Article 20 of the Charter also concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in Finland unequal pay is a reality, despite the international obligations entered into and the legislation enacted by Finland in this area. Concerning the practice of national bodies, UWE alleges in particular that the Ombudsman and the labour inspectorate are not able to fight efficiently against wage discrimination between men and women. These bodies have not removed existing obstacles to lodging complaints relating to discrimination on grounds of unequal pay for equal, similar or comparable work between men and woman.

8. As regards the second ground, concerning the representation of women in decision-making posts in private companies, UWE invokes relevant national legislation and, in support of the allegation that these provisions are not applied in practice, also refers to statistical data reported by European and national sources concerning the performance of Finland in this area. The Committee recalls that the right to equal opportunities is guaranteed by Article 20 of the Charter.

9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the Charter accepted by Finland. The Committee further observes that UWE has indicated in what respect it considers that Finland has not ensured the satisfactory application of such provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, *European Federation of Employees in Public Services (EUROFEDOP) v. Italy*, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.

10. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, UWE is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of international non-governmental organisations entitled to lodge complaints before the Committee.

11. As regards the particular competence of UWE in the area of the complaint, the Committee notes that, according to Article 2 of its Statute, the social objective of UWE is:

“(a) to promote action consistent with the purpose of IFUW [International Federation of University Women] by encouraging cooperation 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,

(b) 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,

(c) to promote lifelong education, especially for women and girls.”

12. The Committee considers that these activities fall within the context of actions in favour of gender equality, one of the fundamental criteria of democracy (Recommendation No. R(98)14 of the Committee of Ministers to member States on gender mainstreaming, adopted on 7 October 1988 at the 643rd meeting of the Ministers’ Deputies). Wage equality for equal work is one of its pillars as well as a major societal challenge. Taking into account the broad scope of UWE’s activities, which are developed in the framework of equality of rights and non-discrimination, the Committee considers that the condition concerning the competence of UWE is fulfilled for the purpose of the instant complaint and rejects the objection of the Government on this point.

13. Finally, the complaint filed on behalf of UWE is signed by Ms Anne Nègre, a lawyer who, according to the mandate signed by Ms Edith Lommerse, President of UWE, and by Ms Roxana Elena Petrescu, General Secretary of UWE, is authorised to lodge a complaint against the 15 States Parties on behalf of UWE. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

14. For these reasons, on the basis of the report presented by Giuseppe PALMISANO, and without prejudice to its decision on the merits of the complaint, the Committee

DECLARES THE COMPLAINT ADMISSIBLE IN RESPECT OF ARTICLES 1, 4§2, 4§3, 4§5, 20 AND E OF THE CHARTER

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 13 October 2017.

Invites the complainant organisation to submit a response to the Government’s submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 13 October 2017, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 13 October 2017.



Giuseppe PALMISANO
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary