



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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Finland
Complaint No 129/2016

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

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 129 /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

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Respondent: Finland

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 15 December 2016, the High Contracting Party, Finland, represented by Ms Krista Oinonen, Agent of the Finnish government, Director, Unit for Human Rights Courts and Conventions, 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 Finland's questioning of the UWE's competence to lodge a collective complaint

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).

Finland's claim that the UWE has no standing is based on an incorrect interpretation of its Constitution, as its role is to defend all the rights of women. It has already been demonstrated in the complaint against Finland 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 Finland 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”*.

The statutory competence already granted by the Council of Europe to lodge collective complaints of violations of the European Social Charter is clear and sufficient.

It can, however, be added that as a result of this Article, the social purpose of the IFUW, which became the GWI, strengthens that of the UWE, as indicated in the complaint. Which is why the complaint includes information relating to the GWI, the address of its headquarters, and details of its website which contains all the relevant information on this INGO (complaint, page 6).

Article 1 of the GWI Constitution has, since 26 August 2016, defined its social purpose as follows (Doc. 80):

- *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.”*

Up to 25 August 2016, the Constitution was worded very similarly as follows (Doc. 79):

- *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.*

It should also be noted that Article 3.2 requires individual members to have a higher education diploma or equivalent qualification.

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 Finland, 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 satisfies the requirements of Article 3 of the Protocol contrary to what is claimed in the observations submitted by Finland, and the UWE's action must therefore be declared admissible.

2. On the arguments alleging a violation of the Charter by Finland

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”*.

All the documents submitted prove that there is unequal pay for equal work between men and women. 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? It is odd that the documents do not appear to have been taken into account in this country's observations.

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

In point of fact, there were numerous documents submitted and cited in the collective complaint which referred directly or indirectly to the texts of this country, along with various international and European texts signed and ratified by this country and to which accordingly it remains bound.

Reference is made to the applicable texts in Finland (complaint, page 16 Docs. 73 to 78), a national action plan for gender equality 2012-2015 (complaint, page 16), and a tripartite equal pay programme 2006-2015 which sought to bring the pay gap down from 20% to 15% and to implement the principle of equal pay for work of equal value (complaint, page 16 with the website address). It was clearly shown through precise and well-supported information how the situation in Finland is unsatisfactory.

The complaint highlights the inadequacy of the tasks of the monitoring bodies in the field of equal pay between women and men, showing that in this respect Finland fails to satisfy the requirements of the European Social Charter to ensure that this equality exists in both law and in practice (complaint, pages 16 and 17, Doc. 49 and CEDAW reports, amongst others).

And in practice, *“very few (or even no) claims on gender pay discrimination make their way up to the competent (regular or administrative) courts .. Case law on equal pay issues is indeed very*

scarce. Explanations for such scarcity are multiple, including the problematic scope of comparison, the lack of personal resources of the claimant, problems regarding time limits, limited compensation and sanction possibilities and also lack of trust in the judiciary” (Doc. 49, page 20” (complaint, page 17).

Furthermore, the very low number of women in leadership positions in companies, which is a proven fact, pay inequality and widespread gender-based discrimination simply for being a woman all constitute a violation of the Social Charter. If Finland cannot see how it has failed to ensure the satisfactory application of the Charter’s provisions, does it claim that pay equality is the rule in the country? It is not. That there is no gender-based discrimination? Not true (complaint pages 18, 19 and documents 32, 33, 34, 36 and 48).

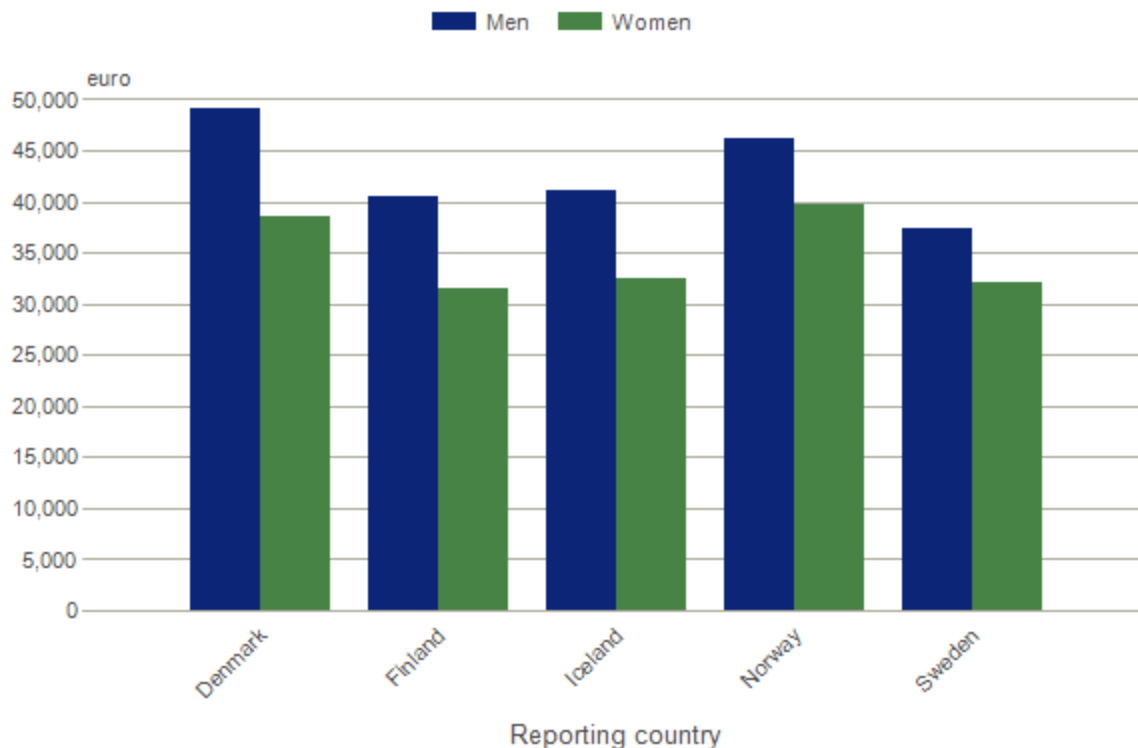
It has a responsibility under the European Social Charter, but it is its choice not to comply with it.

Finland has a gender gap of 18.7% compared with the European Union average of 16.3%. In 2015, in its Gender Equality Index, the EU’s European Institute for Gender Equality (EIGE) calculated that the overall score for the EU was 52.9% while that of Finland was 72.7%. (complaint, pages 22, 23).

The complaint (page 23) quotes the Nordic site <http://www.norden.org/en/fakta-om-norden-1/gender-equality-indicators> which gives an abundantly clear picture of unequal pay between women and men.

INCO04: Mean annual earnings in PPS

Time: 2014 | Sex:



See the full table and select data: <http://norden.statbank.dk/inco04>

The collective complaint is substantiated by the many documents and references provided.

For example, Document 46, containing the conclusions for 2014 of the European Committee of Social Rights:

“Article 4 - Right to a fair remuneration. Paragraph 3 – Non-discrimination between women and men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Finland, as well as of the information contained in the previous report (registered on 17 December 2010), which was not examined by the Committee because of its late submission.

The Committee recalls that in its Conclusions 2010 (when no report was submitted in time by Finland) following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to examine the right to equal pay both under Article 4§3 and Article 20, thus every two years. Henceforth, the Committee invites Finland to include all information on equal pay every time it reports on Article 4§3 and Article 20.

The Committee refers to its conclusion under Article 20 (Conclusions 2012) and Article 4§3 (Conclusions 2003).

Legal basis of equal pay

The Committee asks whether there have been legislative developments concerning the legal basis of equal pay.

Guarantees of enforcement and judicial safeguards

The Committee refers to its Conclusions 2003, where it observed that there is no provision under Finnish law for declaring a dismissal null by reprisal and/or reinstating a victim of such a dismissal. Therefore, the Committee considered that Finnish law did not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

The Committee further found in its Conclusion on Article 24 (Conclusions 2012) that the situation in Finland was not in conformity with Article 24 of the Charter, on the ground that the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal.

The Committee recalls that in the event of retaliatory dismissal, the remedy should in principle be reinstatement in the same job or a job with similar duties. Only when reinstatement is not possible or the employee has no desire to be reinstated, should damages be paid instead.

In the absence of any further information regarding this issue, the Committee considers that the situation is not in conformity with the Charter, on the ground that the law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

Methods of comparison and other measures

The Committee refers to its conclusion under Article 20 (Conclusions 2012) where it noted that pay comparisons can be made between the wages and salaries paid to the employees of the same employer. However, such comparisons are not limited to a single working or functional unit. Comparison of wages and salaries between employees serving in separate units can also be compared. Due consideration must then also be given, for example to the impact of different pay levels in different parts of the country. The Committee refers to its Statement of Interpretation on Article 20 in the General Introduction to Conclusions 2012 in this respect and asks for further clarification of the matter.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 4§3 of the Charter, on the ground that the law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.”

Along the same lines, Doc. 40 contains the “*Concluding observations on the 7th periodic report of Finland*” by the Committee on the Elimination of Discrimination against Women, CEDAW, published on 10 March 2014. This document is of particular relevance in demonstrating the unsatisfactory nature of the way in which Finland deals with this issue:

- *“Definition of equality and non-discrimination*
10. *The Committee welcomes the proposed amendment to the Act on Equality between Women and Men, which expands the definition of sex and gender-based discrimination to include discrimination based on gender identity and gender expression. The Committee notes with concern, however, that the Gender Equality Act and the Non-Discrimination Act do not currently provide adequate protection to women against multiple or intersecting forms of discrimination.*
11. ***The Committee urges the State party to ensure that reforms explicitly affording protection to women against multiple or intersecting forms of discrimination in all national gender equality and anti-discrimination laws are adopted in a harmonised manner.*** Doc. 40 page 3
- *National machinery for the advancement of women and gender mainstreaming (...)* *The Committee is however concerned about budgetary and human resource constraints which hinder measures and policies for the advancement of women and effective use of gender mainstreaming in the State party, such as gender impact assessments in the drafting of laws in ministries, which are still not common practice. The Committee is also concerned about the lack of coordination, effective follow-up and monitoring of these measures through a high level coordinating mechanism. Furthermore, while noting the draft law which proposes to replace the Ombudsman for Minorities with a new Ombudsman for Equal Treatment, the Committee is concerned about the lack of specific institutions for the advancement of women and gender equality, as well as the insufficient resources allocated to existing mechanisms, such as the Ombudsman for Equality which monitors and supervises the Law on Equality between Women and Men.*
- *13 In line with its general recommendation No. 6 on effective national machinery and publicity, the Committee recommends that the State party:*
 - (a) *Provide its existing and new national institutions and bodies for the advancement of women and gender equality with adequate human, technical and budgetary resources;*
 - (b) *Recalling the Committee’s previous recommendations (CEDAW/C/FIN/CO/6, para 170), consider establishing a high level coordination mechanism within the Government, with adequate resources, and with the responsibility and authority to ensure effective gender mainstreaming in all government policies, comprehensively monitor the situation of women, formulate new policies and effectively carry out strategies and measures to eliminate discrimination against women; and*
 - (c) *Take concrete budgetary steps to ensure that gender impact assessments become common practice when drafting laws, policy programmes and action plans in all ministries.*

How can Finland claim that it is acting satisfactorily with regard to equal pay and combating discrimination in view of the lack of effectiveness of the texts that have been adopted, the absence of any co-ordinated policies and the lack of any budgetary resources allocated to these policies?

But this is not all in this report submitted by Finland that we are producing:

“Employment

26. *The Committee notes the Equal Pay Programme, which aims at reducing the gender pay gap to 15 per cent by 2015, and the strengthening of the practice of pay surveys within the context of the equality plan. The Committee, however, remains concerned, however, about the persistence of a gender pay gap of 17 per cent in the State party. The Committee is also concerned about the high unemployment rate and low wages among migrant and Roma women, single mothers, older women and women with disabilities. The Committee also reiterates its concern, expressed in its previous concluding observations ([CEDAW/C/FIN/CO/6](#), para. 25) concerning illegal dismissals of women owing to pregnancy, childbirth and maternity leave. It further regrets that the percentage of men who take parental leave remains low and that family leave available to men and single parents remains considerably low.*

27. *The Committee recommends that the State party:*

(a) Take immediate measures to meet the target set by the Equal Pay Programme of a gender-based wage gap of 15 per cent by 2015, with a view to closing the wage gap between men and women in accordance with the Equal Remuneration Convention, 1951 (No. 100) of the International Labour Organization;

(b) Adopt temporary special measures to accelerate the equal participation of women from disadvantaged groups, including migrant women, Roma women, single mothers, older women and women with disabilities in the labour market, and undertake comprehensive studies on the employment and working conditions of those groups of women, with recommendations for enhancing their effective participation in the labour market;

(c) Amend legislation to specifically prohibit employers from not renewing fixed-term employment contracts based on family leave and from limiting their duration on that basis;

(d) Continue efforts to ensure the reconciliation of family and professional responsibilities and promote the equal sharing of domestic and family tasks between women and men, including by developing incentives to encourage more men to avail themselves of parental leave.”.

The above relates more to the merits. The ECSR will note that the collective complaint satisfies the requirements of Article 4 of the Protocol, that the complaint is precise and detailed, containing corroborating evidence to show that Finland is failing to act in a satisfactory manner

with regard to equal pay between women and men, and will consequently declare the UWE's complaint to be admissible.

3. On paragraph 2 of the Explanatory Report to the Additional Protocol of 1995 referred to by Finland

Finland takes the view that the fact that UWE has submitted collective complaints against 15 States Parties to the Charter which have ratified the Protocol "*can be seen as an alternative, rather than a complement to the reporting procedure*" (Observations Finland, page 4).

There is no hierarchy in the reporting or collective complaints procedure, and neither is subordinate to the other. Collective complaints are not designed to replace or duplicate the supervision cycles; they are another procedure. States can be the subject of a collective complaint even if they address subjects which are also being examined in the supervision cycle. In this way, they afford the opportunity to highlight and go deeper into certain aspects.

In this way, it is possible to avoid allowing too long a time to elapse between verifications of conformity of the policies pursued with certain articles, as the intervals between these verifications may be considerable.

Furthermore, a qualified organisation such as the UWE has no way in practice of suggesting a report on any violation whatsoever. It can neither initiate such a report nor contribute to it.

This democratic remedy, established in 1995, is a way of opening out to civil society. The fact of highlighting this failure to comply with the European Social Charter in respect of equal pay between women and men is a means of reinforcing the supervision of states. Accordingly, if one concurs with the arguments submitted by Finland, the fact of submitting a complaint against 15 States Parties is a ground for inadmissibility in itself. But where is the text that forbids this? Nor is there any text preventing states reaching an agreement amongst themselves to produce a response to the collective complaints submitted by a single INGO, as in the present case.

There is nothing in the observations submitted by Finland that supports non-recognition of UWE's standing. The ECSR should declare the UWE competent.

4. On Finland's claim that the complaint is a political manifesto

No problem regarding admissibility had been raised, for example, in the Greek General Confederation of Labour v. Greece case, Complaint No. 111/2014, in which the wording of the complaint, as presented, also comprised a political dimension in the highest sense of the term.

Finland challenges the contention that unequal pay between women and men for equal work is rooted in the culture and derives from history and the slow pace of policies pursued in recent years as a result of serious obstacles preventing equal pay from being implemented. A review of the obstacles that are common to various countries highlighting this truth might not be what these countries want to hear, but unfortunately it is today's everyday reality.

Since Plato in “The Statesman”, a distinction has been drawn, which has been further developed over the centuries, between party politics, the preserve of political parties, a necessarily partisan ideology to be implemented, and politics in the much broader sense, as promoted by civil society, independent of any ideology or political party.

The UWE is independent of all political parties. It is therefore odd that the representative of a government whose members have been brought to power by means of elections based on an ideology, should make such an allegation against the UWE.

Legal remedies are available to different applicants through legal instruments. The European Social Charter is one of these instruments as it is viewed by some as the social constitution of Europe, making it possible, in a totally unique way, for a collective complaint to be submitted, in the first instance, to a committee comprising judges of the highest level, independent of the states which have appointed them. It is to the credit of the Council of Europe and its member states that such a quasi-judicial body has been established.

While the aim is to spotlight the situation in many countries of Europe, the failings at national level are clearly set out for each country in each complaint. Drafting the complaint was a long and arduous endeavour, as it was wished to facilitate the task of the rapporteurs. However, apart from the statement of facts and the highlighting of this manifest, persistent and abnormal situation of inequality in the various countries, each complaint is entirely tailored to each country. One needs only to read them to see the specific issues raised which are different for each country.

This inequality is to be found in Finland, as has been proved by the UWE. And this situation has, as its corollary, the violation of the revised European Social Charter. Why sign and ratify texts if they are not applied in practice?

5. 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 Finland,

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

- Doc. 79 May 2015, Constitution and Rules of Procedure of GWI
Doc. 80 26 August 2016, Constitution and Rules of Procedure of GWI