



European
Social
Charter

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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. Ireland

Complaint No. 132/2016

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, General Rapporteur
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 11 and 12 September 2019, 16 and 17 October 2019, 2,3 and 5 December 2019,

On the basis of the report presented by Krassimira SREDKOVA,

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 Ireland is in violation of Articles 1, 4§3, 20 and E of the Revised European Social Charter ("the 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 Ireland.
3. On 4 July 2017, referring to Article 6 of the 1995 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 Ireland ("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 (ETUC) asked for an extension to 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. The Government's submissions on the merits were registered on 13 October 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 21 December 2018. On 17 October 2017, UWE asked for an extension to the deadline for presenting its response. The President of the Committee extended this deadline until 12 January 2018. UWE's response was registered on 11 January 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 15 March 2018. On 23 January 2018, the Government asked for an extension to the deadline for presenting its further response. The President of the Committee extended this deadline until 6 April 2018. The Government's further response was registered on 6 April 2018.

11. Pursuant to Rule 32A of the Rules, the President invited 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 Ireland constitutes a violation of Articles 1, 4§3 and 20, as well as Article E combined with Articles 4§3 and 20 of the Charter, on the following grounds:

- Firstly, UWE alleges that the pay gap between women and men still persists and is unfavourable to women. Unequal pay is a reality, despite the international obligations entered into and the domestic legislation enacted.
- Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, as there are no effective legislative measures to ensure the sufficient representation of women in decision-making bodies within private enterprises.

14. UWE further asks for the payment of €10,000 for costs incurred during the proceedings.

B – The respondent Government

15. The Government asks the Committee to dismiss the complaint on the basis that it is not sufficiently detailed and lacks substance.

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 20 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 20 of the Charter.

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 Ireland, the ETUC maintains that the ETUC considers that despite the existing regulatory framework concerning equal pay, there still exists a gender pay gap. Moreover, there exists no regulatory framework on representation of women in decision-making positions in private enterprises.

24. According to the ETUC, the fact that a phenomenon is prohibited does not, however, automatically mean that it ceases or disappears. Pay discrimination between women and men still exists despite the fact that it is prohibited and that there are a number of tools both in legislation and collective agreements that are intended to even out pay differences. From a substantive perspective, the ETUC believes that there are elements which should (at least in combination) lead to a violation of Article 20, such as the existence of the pay gap (statistical evidence) and the fact that the official statistics are still excluding small (micro) sized enterprises, which makes it most probable that the gender pay gap is even higher in these enterprises.

25. As regards a procedural perspective (i.e. a general framework to ensure a satisfactory application and enforcement/supervision of the principle of equal pay), the result of eliminating the gender pay gap is not yet fully achieved. From the point of view of the ETUC this illustrates that there still is a violation of Article 20 of the Charter also from the procedural perspective.

26. Concerning the under-representation of women in decision-making positions within private companies this problem has only been addressed in more recent years. As regards substance, 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 20 of the Charter from the substantive perspective.

27. As regards procedure, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decision-making bodies within private enterprises. In practice, there is even less supervision and enforcement. From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

OTHER OBSERVATIONS

A – The European Union

28. 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.

29. 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)³, the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

30. 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.

31. In November 2017, the Commission adopted a Communication: EU Action Plan 2017-2019¹⁰, 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

32. 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.

33. 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.

34. 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)

35. The Irish Human Rights and Equality Commission submits the following contribution to EQUINET:

36. The Irish Human Rights and Equality Commission established under the Irish Human Rights and Equality Commission Act 2014, is both the national human rights institution and the national equality body for Ireland. In accordance with its founding

legislation, the Commission is mandated to 'keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality' and 'to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights and equality'.

37. As regards the legislation, EQUINET refers to the Employment Equality Acts 1998-2015 and states that one of the issues with the current legislative framework is that an individual claimant must identify a specific named comparator, who is performing 'like work' for the same or an associated employer. This requires a potential claimant to gather information on the pay of a male colleague. While the claimant has a right to information under Section 76 of the Employment Equality Acts 1998-2015, there is no obligation on the employer to provide this information. As a result, it can be very difficult for claimants to prove an equal pay case.

38. As regards the adequacy of remedies, EQUINET refers to the 2017 report to the UN Committee on the Elimination of Discrimination Against Women, in which the Commission stated that the Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination. Similar limitations on compensation in other EU Member States have been found to be incompatible with EU law. This has led Ireland's compliance with EU law being questioned, particularly in relation to the question of 'whether the legislation includes real and effective compensation'. In gender discrimination cases, the complainant may refer their case to the Circuit Court, where compensation is not limited but the individual may face other barriers such as increased costs, particularly if the claim is lost.

39. As regard pay transparency, according to EQUINET, the claimant has a right to information under Section 76 of the Employment Equality Acts 1998-2015 but there is no obligation on the employer to provide this information. Another means of increasing wage transparency is the introduction of pay reporting.

40. EQUINET submits that in 2017, the Labour Party introduced the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 in Parliament. The purpose of the Bill is to develop a 'Gender Pay Gap Information Scheme that would require employers to publish information in relation to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female workers and, if so, the nature and scale of such differences'. Since then the Government of Ireland has indicated that it is currently developing legislative proposals on the same matter.

41. As regards remedies, Section 82(4) of the Employment Equality Acts 1998–2015 provides that the maximum amount that can be paid in compensation is the greater of 104 weeks' pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in

any other case €13,000. Section 27(2) of the Equal Status Acts 2000–2015 provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

42. As regards the enforcement role of the Irish human Rights and Equality Commission, EQUINET refers to the Irish Human Rights and Equality Commission Act 2014. Part 3 of this Act includes codes of practice (section 31), equality reviews and equality action plans (section 32), substantive notices (section 33), inquiries (section 35), equality and human rights compliance notices (section 36) and the institution of legal proceedings by the Commission (section 41).

43. Section 42(1) of the 2014 also enshrines the Public Sector Equality and Human Rights Duty in statute. This requires all public bodies in the performance of their functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights. Section 42(2) of the Act requires public bodies to provide an assessment of the human rights and equality issues relevant to their functions in their strategy statements and to provide an update on their activities in each annual report. The legislation came into effect on 1 November 2014. Under Section 42(3) the Commission ‘may give guidance to and encourage public bodies in developing policies of, and exercising, good practice and operational standards in relation to, human rights and equality’. The Commission is working with a number of public bodies to pilot the self-assessment process in order to assist public bodies to comply with the requirements of Section 42. One of these projects is taking place in the higher education sector, through a pilot project with University College Cork.

RELEVANT DOMESTIC LAW

44. The parties to this complaint rely on the following texts:

A – Constitution

Article 40.1

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

Article 45

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively and shall not be cognisable by any Court under any of the provisions of this Constitution. ... 2. The State shall, in particular, direct its policy towards securing:-

(i) That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

B – Employment Equality Act 1998

Discrimination in the employment relationship is prohibited by the Employment Equality Act 1998 (as amended). It prohibits discrimination in the following areas: (a) access to employment, (b) conditions of employment, (c) training or experience for or in relation to employment, (d) promotion or regrading, or (e) classification of posts.

Section 2 - Interpretation

'Remuneration' is defined as 'in relation to an employee, does not include pension rights but, subject to that, includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment.'

Section (6)(2)(a) of the Employment Equality Act 1998 prohibits discrimination in the employment relationship on the grounds of gender

6 (1) For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where —

(a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the ' discriminatory grounds ') which —

- (i) exists,
- (ii) existed but no longer exists,
- (iii) may exist in the future, or
- (iv) is imputed to the person concerned,

(b) a person who is associated with another person— (i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and (ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.

(2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are—

(a) that one is a woman and the other is a man (in this Act referred to as "the gender ground"), ...” in respect of remuneration under section 19(4) of the 1998 Act, which provides:

“ (a) Indirect discrimination occurs where an apparently neutral provision would put persons of a particular gender (being As or Bs) at a particular disadvantage in respect of remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the persons referred to in that paragraph shall each be treated for the purposes of subsection (1) as complying or, as the case may be, not complying with the provision concerned, whichever results in the higher remuneration, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

(c) In any proceedings statistics are admissible for the purpose of determining whether this subsection applies in relation to A or B.”

Section 7 - Like work

(1) Subject to *subsection (2)*, for the purposes of this Act, in relation to the work which one person is employed to do, another person shall be regarded as employed to do like work if—

(a) both perform the same work under the same or similar conditions, or each is interchangeable with the other in relation to the work,

(b) the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant to the work as a whole, or

(c) the work performed by one is equal in value to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

(2) In relation to the work which an agency worker is employed to do, no person except another agency worker may be regarded under *subsection (1)* as employed to do like work (and, accordingly, in relation to the work which a non-agency worker is employed to do, an agency worker may not be regarded as employed to do like work).

(3) In any case where—

(a) the remuneration received by one person (“the primary worker”) is less than the remuneration received by another (“the comparator”), and

(b) the work performed by the primary worker is greater in value than the work performed by the comparator, having regard to the matters mentioned in subsection (1)

(c) then, for the purposes of subsection (1)(c), the work performed by the primary worker shall be regarded as equal in value to the work performed by the comparator.

Section 19—Entitlement to equal remuneration

(1) It shall be a term of the contract under which A is employed that, subject to this Act, A shall at any time be entitled to the same rate of remuneration for the work which A is employed to do as B who, at that or any other relevant time, is employed to do like work by the same or an associated employer.

[(2) In this section ‘relevant time’, in relation to a particular time, is any time (including a time before the commencement of this section) during the 3 years which precede, or the 3 years which follow, the particular time.]

(3) For the purposes of this Part, where B’s employer is an associated employer of A’s employer, A and B shall not be regarded as employed to do like work unless they both have the same or reasonably comparable terms and conditions of employment.

(4) (a) Indirect discrimination occurs where an F42 [apparently neutral provision would put] persons of a particular gender (being As or Bs) at a particular disadvantage in respect of remuneration compared with other employees of their employer

(b) Where paragraph (a) applies, the persons referred to in that paragraph shall each be treated for the purposes of subsection (1) as complying or, as the case may be, not complying with the provision concerned, whichever results in the higher remuneration, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

(c) In any proceedings statistics are admissible for the purpose of determining whether this subsection applies in relation to A or B.]

(5) Subject to subsection (4), nothing in this Part shall prevent an employer from paying, on grounds other than the gender ground, different rates of remuneration to different employees.

Section 21 - Equality clause relating to gender issues

1) If and so far as the terms of a contract of employment do not include (expressly or by reference to a collective agreement or otherwise) a gender equality clause, they shall be taken to include one.

(2) A gender equality clause is a provision relating to the terms of a contract of employment, other than a term relating to remuneration or pension rights, which has the effect that if—

(a) A is employed in circumstances where the work done by A is not materially different from that done by B in the same employment, and

(b) at any time A's contract of employment would (but for the gender equality clause)—

(i) contain a term which is or becomes less favourable to A than a term of a similar kind in B's contract of employment, or

(ii) not include a term corresponding to a term in B's contract of employment which benefits B, then the terms of A's contract of employment shall be treated as modified so that the term in question is not less favourable to A or, as the case may be, so that they include a similar term benefiting A.

(3) A gender equality clause shall not operate in relation to a difference between A's contract of employment and B's contract of employment if the employer proves that the difference is genuinely based on grounds other than the gender ground.

(4) Without prejudice to the generality of *section 8(1)*, where a person offers A employment on certain terms and, were A to accept the offer on those terms, the gender equality clause in A's contract of employment would have the effect of modifying the terms in either of the ways specified in *subsection (2)*, the making of the offer shall be taken to amount to discrimination against A on the gender ground in relation to A's conditions of employment.

Section 29 - Entitlement to equal remuneration.

(1) It shall be a term of the contract under which C is employed that, subject to this Act, C shall at any time be entitled to the same rate of remuneration for the work which C is employed to do as D who, at that or any other relevant time, is employed to do like work by the same or an associated employer.

(2) For the purposes of *subsection (1)*, in relation to a particular time, a relevant time is any time (on or after the commencement of this section) which falls during the 3 years which precede, or the 3 years which follow, the particular time.

(3) For the purposes of this Part, where D's employer is an associated employer of C's employer, C and D shall not be regarded as employed to do like work unless they both have the same or reasonably comparable terms and conditions of employment.

(5) Subject to *subsection (4)*, nothing in this Part shall prevent an employer from paying, on grounds other than the discriminatory grounds, different rates of remuneration to different employees.

Section 76—Right to information

(1) With a view to assisting a person ("X") who considers—

(a) that another person (“Y”) may have discriminated against X in contravention of this Act or may have dismissed or otherwise penalised X in circumstances amounting to victimisation,

(b) that another person (“Y”) who is responsible for providing remuneration to X is not providing that remuneration as required by an equal remuneration term, or

(c) that another person (“Y”) with whom X has a contract of employment has not provided X with a benefit under an equality clause in that contract, to decide whether to refer the matter under any provision of *section 77* and, in the event of such a reference, to formulate and present X’s case in the most effective manner, the Minister may by regulations prescribe forms by which—

(i) X may question Y so as to obtain material information, and (ii) Y may, if Y so wishes, reply to any questions.

(2) Subject to *subsections (3) to (7)*, information is for the purposes of this section “material information” if it is—

(a) information as to Y’s reasons for doing or omitting to do any relevant act and as to any practices or procedures material to any such act,

(b) information, other than confidential information, about the remuneration or treatment of other persons who stand in relation to Y in the same or a similar position as X, or

(c) other information which is not confidential information or information about the scale or financial resources of the employer’s business and which, in the circumstances of the case in question, it is reasonable for X to require.]

(3) In *subsection (2)* “confidential information” means any information which relates to a particular individual, which can be identified as so relating and to the disclosure of which that individual does not agree.

(4) Nothing in this Act shall be construed as requiring Y or any other person—

(a) to furnish any reference (or any copy thereof or extract therefrom) or any report (or copy thereof or extract therefrom) relating to the character or the suitability for employment of any person (including X), or

(b) to disclose the contents of such a reference or report.

Section 82 sets out the redress that can be awarded by the Workplace Relations Commission or Circuit Court:

“(a) an order for compensation in the form of arrears of remuneration (attributable to a failure to provide equal remuneration) in respect of so much of the period of employment as begins not more than 3 years before the date of the referral under *section 77(1)* which led to the decision;

(b) an order for equal remuneration from the date referred to in paragraph (a);

(c) an order for compensation for the effects of acts of discrimination or victimisation which occurred not earlier than 6 years before the date of the referral of the case under *section 77*;

(d) an order for equal treatment in whatever respect is relevant to the case;

(e) an order that a person or persons specified in the order take a course of action which is so specified;

(f) an order for re-instatement or re-engagement, with or without an order for compensation.”

Section 85A

(1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to a complainant.

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director under section 85(1), facts are established by or on behalf of the Authority from which it may be presumed that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.

(4) In this section ‘discrimination’ includes- (a) indirect discrimination, (b) victimisation, (c) harassment or sexual harassment (d) the inclusion in a collective agreement to which section 9 applies of a provision which, by virtue of that section, is null and void.”

C – Human Rights and Equality Commission Act 2014

Section 32 - Equality reviews and equality action plans

(1) The Commission may invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof to— (a) carry out an equality review in relation to that undertaking or those undertakings, or (b) prepare and implement an equality action plan in respect of that undertaking or those undertakings, or both.

(2) The Commission may, if it thinks it appropriate, itself— (a) carry out an equality review, or (b) prepare an equality action plan, in relation to any undertaking of 50 or more employees or group of such undertakings or such undertakings making up a particular industry or a sector thereof.

(3) An equality review or equality action plan may relate to— (a) equality of opportunity generally, or (b) a particular aspect of discrimination, within an undertaking or group of undertakings or undertakings making up a particular industry or a sector thereof.

(4) Where an equality review or equality action plan relates to matters that are covered by both— (a) the Act of 1998, and (b) the Act of 2000, the review or the action plan, as the case may be, shall deal separately with those matters and each part of the review or plan, as the case may be, shall be treated as a separate equality review plan or equality action plan, as the case may be.

Section 35 - Inquiries

(1) The Commission, either of its own volition or if requested by the Minister, may conduct an inquiry if it is considered by the Commission that— (a) there is, in any body (whether public or otherwise) institution, sector of society, or geographical area, evidence of— (i) a serious violation of human rights or equality of treatment obligations in respect of a person or a class of persons, or (ii) a systemic failure to comply with human rights or equality of treatment obligations, and (b) the matter is of grave public concern, and (c) it is in the circumstances necessary and appropriate so to do.

(2) An inquiry may be undertaken by one or more than one member of the Commission.

(3) Before conducting an inquiry under this section, the Commission shall, as soon as may be, prepare terms of reference for the inquiry and an outline of the procedures to be followed for the inquiry.

(4) The Commission shall arrange for a copy of the terms of reference and outline of procedures referred to in subsection (3) to be laid before each House of the Oireachtas.

(5) As soon as may be after the terms and outline of the procedures concerned are laid in accordance with subsection (4) the Commission shall arrange for a notice of those terms and that outline to be published— (a) in at least one newspaper circulating in the State, and (b) in such other manner as the Commission considers appropriate.

(6) In conducting an inquiry the Commission shall to the greatest possible extent consistent with its duties under this Act— (a) seek the voluntary co-operation of persons whose evidence is desired for the purposes of the inquiry, and (b) facilitate such co-operation.

(7) The Commission shall conduct its inquiry as expeditiously as is consistent with its duties under this Act.

Section 41 - Institution of legal proceedings by Commission

(1) The Commission may institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons.

(2) The declaratory relief the Commission may seek to obtain in such proceedings includes relief by way of a declaration that an enactment or a provision thereof is invalid having regard to the provisions of the Constitution or was not continued in force by Article 50 of the Constitution.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

45. In its Recommendation Rec(1985)2 on legal protection against sex discrimination, the Committee of Ministers 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.

46. 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)

47. In its Resolution 1715(2010), the PACE observed that discrimination against women in the labour market has a long history. 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.

48. 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.

49. 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.

50. In its Resolution 1921 (2013) 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)

51. 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.”

52. 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

53. 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.”

54. 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.

55. 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

56. 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 on decision-making boards in enterprises

57. 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)²⁹; Slovakia (2015); Spain (2015); Denmark (2015)¹⁶.

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

58. 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

Principles relating to the Status of National Institutions (The Paris principles)

59. 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

ILO Equal Remuneration Convention 100:

60. 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

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

62. The Treaty on European Union 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.”

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

Article 8

“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. [...]”

64. The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States when they apply EU law, 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

65. 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."

66. 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).

67. 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.

68. The Capital Requirements Directive (2013/36/EU) legislation addresses directly the 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

69. 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.

70. 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.”

71. 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

72. 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/EC 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.”

a) Court of Justice of the European Union

73. 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.

74. 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).

75. 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).

76. 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).

77. 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).

78. 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).

79. 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).

80. 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).

81. 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).

82. 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).

83. 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).

84. 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

85. 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.

86. 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)).

87. Article 20 of the Charter (and Article 1 of the 1988 Additional Protocol) 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.

88. All the States Parties to the Charter having accepted Articles 4§3 and/or 20 are aware that this right has to be practical and effective, and not merely theoretical or illusory (International Commission of Jurists (ICJ) against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

89. The Committee notes that UWE also invokes Article 1 of the 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 Articles 4§3 and 20 of the Charter. As regards Article E, which is also invoked by UWE, it is clear from the very wording of Articles 4§3 and 20 of the Charter that their scope includes the prohibition of discrimination. The Committee therefore considers that it is not necessary to examine whether there has been a violation of Article E in conjunction with Articles 4§3 and 20 of the Charter.

90. 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.

91. 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).

92. 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).

93. 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 State obligations arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

94. 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

95. 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 and 20.c of the Charter. 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 20.c of 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 20.d of the Charter, 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 AND 20.C OF THE CHARTER AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

96. Articles 4§3 and 20.c of the Charter 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 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: (...)

...
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

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

Effective remedies

98. UWE claims that in Ireland female workers are at considerable risk of being dismissed quite rapidly, albeit of course on another pretext, if they demand equal pay for equal work. This is not to mention the cost of such proceedings, the energy they require and the pressure they place women under.

99. Moreover, there remains a final obstacle, which is the limitation period that applies in the area of pay disputes, which can be somewhat short when a woman has been discriminated against over a long career, meaning that any back pay will be limited. Therefore, embarking on such proceedings is an extremely hazardous process, producing a very uncertain result.

100. UWE believes that it should not be up to female workers to cover the cost of such proceedings out of their personal finances when they have been discriminated against throughout their careers in a country that fails to abide by its commitments on equal pay, refusing to adapt its procedures to take account of these flagrant inequalities, whether it be in companies, during inspections or at a later stage, in the courts.

Job comparisons and pay transparency

101. UWE claims that women who may wish to make complaints find it hard or impossible to obtain comparative data concerning wages paid. The Government pretends not to understand the nature of the complaint and presents irrelevant arguments concerning the risks of breaches of the principle of the confidentiality of personal data or powers which the Labour Inspectorate allegedly has enabling it to obtain the necessary information. However, what these powers actually involve remains obscure and no figures are provided on cases where they are used.

102. As regards classification systems, according to UWE, nothing is said about non-neutral classifications. The Government refers to an obligation to negotiate classifications, but not a requirement to establish them. Nor does it refer to checks on existing classifications by the employment service on the basis of a reliable instrument developed by experts. Moreover, according to UWE, the Government says nothing about the component elements or characteristics of this instrument, or about the pay gap calculation method for firms.

103. As regards jobs comparisons, according to UWE the assessment base should not just be an individual company but must be extended to entities forming a working environment or a technical unit for a group of workers employed by several companies, including subcontractors. However, UWE alleges that the Government seems to be unaware of the concept of technical unit, as a result of which the scope of the regulations is very limited. Nothing is said about checks on the implementation of company reports. Likewise, the size of companies is a key assessment base and the whole range of issues is still to be addressed in many companies not covered by the legal provisions on equal pay.

Equality bodies and other institutions

104. In its submissions, UWE refers to the Equality Authority and the Equality Tribunal. According to UWE, the Tribunal appears to have non-compulsory jurisdiction, meaning that applicants may bring cases before an ordinary court.

105. As regards the Labour Inspectorate, according to UWE, in Ireland, as in many other EU countries, one of the consequences of austerity policies has been to reduce the number of labour inspectors and hence the number of inspections. In 2009, 123 inspectors carried out over 19,000 inspections, meaning that there were 9.4 inspections per 1,000 workers. In 2013, 107 inspectors carried out just over 12,000 inspections (6.5 inspections per 1,000 workers). The Labour Inspectorate's budget has decreased by over 20% in five years. As a result, labour inspectors tend increasingly not to investigate issues of equal pay and not to file reports of offences liable to result in criminal proceedings or a civil action.

106. UWE also argues that the Government has not increased the powers of the Labour Inspectorate in terms of detecting discrimination in companies. Ireland gives no indication of the number of checks performed in companies or the follow-up action.

107. UWE further refers to the shadow report by the National Women's Council of Ireland of 2017, which was drawn up in advance of the examination of the country's compliance with the Convention on the Elimination of All Forms of Discrimination against Women. According to this report, the amalgamation of the Equality Authority and the Human Rights Commission into the Irish Human Rights and Equality Commission has the potential to produce a strong body that is capable of strengthening the protection of women and girls, in particular those from disadvantaged groups, from all forms of discrimination.

108. However, concerns have been raised that the organisation's 'equality' function is not bestowed the same degree of focus as its 'human rights' work. The National Women's Council's opinion on the subsuming of the Equality Tribunal into the Workplace Relations Commission is not favourable. According to this opinion, the Equality Tribunal was an impartial, independent body set up to investigate and decide or mediate cases brought under Ireland's equality legislation. In 2015 it was merged with four other bodies to form the Workplace Relations Commission. Civil society organisations have already raised considerable issues in relation to the visibility of equality in the work of the Commission, the accessibility of the Commission for those experiencing inequality, and the procedures of the Commission in cases of discrimination. In particular, the functions of the Commission as set out in the governing legislation are silent on issues of equality, diversity and discrimination; publications make little mention of equality cases and equality legislation. The monthly reporting of the Equality Tribunal on equality cases decided or mediated has not been continued, and there is no breakdown provided in Commission publications of cases by ground or field of discrimination and outcome.

109. In November 2014, the Irish Human Rights and Equality Commission was established as Ireland's national equality body. The body is equipped with equivalent powers to its predecessor and the funding position has improved. The Equality Tribunal was subsumed, along with several employment rights bodies, into the Workplace Relations Commission in 2015.

110. In 2015, only 45 persons received assistance in anti-discrimination cases, which is a low figure. At present, the situation is not what would be expected in terms of effectiveness.

111. According to UWE, a further problem involves barriers affecting access to justice. The civil legal aid scheme is not available to people who want to take employment, employment equality or equal status claims to the Workplace Relations

Commission. While the stated intention is to remove lawyers from the process, in practice, employers tend to be legally represented before the Commission. In circumstances where women, often financially disadvantaged, cannot access the civil legal aid scheme, this is a real cause for concern. Sometimes equality and employment law cases involve complex legal issues and there is a risk that individuals, including older persons, may not be able to present their cases in the manner that fairness demands without legal representation.

2. The respondent Government

Recognition of the right to equal pay in legislation

112. According to the Government, the Employment Equality Act 1998 (as amended) provides robust legislative protection, prohibiting discrimination and inequality in conditions of employment. Gender discrimination is expressly prohibited by this legislation, and the principle of equal pay for equal work is provided.

113. Section 19 of the 1998 Act states that it shall be a term of the contract under which A is employed that, subject to this Act, A shall at any time be entitled to the same rate of remuneration for the work which A is employed to do as B who, at that or any other relevant time, is employed to do like work by the same or an associated employer.

114. According to the Government, this is a key protection for the right of women and men to receive the same rate of payment for like work by the same, or an associated employer.

Effective remedies

115. The Government submits that through the Workplace Relations Commission there exists an effective and efficient mechanism where complaints of gender discrimination can be resolved through mediation or adjudication. Complaints can also be lodged in the Circuit Court. If a complaint is upheld, the Workplace Relations Commission or circuit Court can impose a range of sanctions, including compensation, reinstatement and directions to the employer on actions going forward. There is no limit to the compensation that can be awarded in the Circuit Court for gender discrimination.

116. According to Section 85(A) of the Employment Equality Act burden of proof in relation to discrimination complaints can be moved to the employer where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

117. According to the Government, the Workplace Relations Commission Annual Report 2016 gives detailed analysis of complaints made under the Employment Equality Acts 1998-2011 and each of the grounds of discrimination indicated in each complaint during 2016. There were 691 specific complaints under the Acts during this time, and each complaint may indicate more than one ground of discrimination. Gender was cited as a ground of complaint in 51% of cases, showing that there is a substantial number of employees bringing complaints on this basis.

118. The Government submits that complaints relating to gender discrimination may be made to the Circuit Court rather than the Workplace Relations Commission, at the option of the employee. This provides a judicial safeguard and ensures that the employee can have their complaint dealt with in a public court of law.

119. In response to the allegation by UWE that the limits set on compensation arguably undermine the requirement that sanctions be effective, proportionate and dissuasive, the Government underlines that the range of remedies available in cases of gender discrimination on the merits are appropriate, proportionate and effective. Section 82 of the Employment Equality Acts sets out the redress that can be awarded by the Workplace Relations Commission or Circuit Court.

120. As regards the amount of compensation that may be awarded in pay discrimination cases, the Government submits that there is no limit on compensation that can be awarded by the Circuit Court in a gender discrimination case. This allows the Circuit Court to go beyond its usual jurisdiction limit of €65,000.

Job comparisons and pay transparency

121. The Government refers to the National Strategy for Women and Girls (2017-2020), which includes a number of measures that will continue to improve socio-economic equality for girls and women in Ireland, and in particular reduce the gender pay gap. Among these measures is promoting wage transparency by requiring companies of 50 or more workers to complete a wage survey periodically and report the results. The Government states that a Private Member's Bill regarding pay reporting is currently passing through the Irish Houses of Parliament. It passed through the Committee Stage of the Seanad Éireann (Upper House) on 25 October 2017 and will shortly fall to be considered by Dáil Éireann (Lower House).

Equality bodies and other institutions

122. According to the Government, the Human Rights and Equality Commission and the Workplace Commission act as monitoring bodies and play a role in promoting and encouraging compliance with equality legislation.

123. The Irish Human Rights and Equality Commission is a body set up to seek to implement and monitor the requirements of equality and human rights law, including gender equality laws. It carries out the following duties, among others:

- (a) Providing information to the public in relation to human rights and equality generally
- (b) Keeping under review the adequacy and effectiveness of law and practice in the State relating to human rights and equality
- (c) Making recommendations to Government on measures to strengthen, protect and uphold human rights and equality in the State
- (d) Examining any legislative proposal and report its views on any implications for human rights or equality
- (e) Providing legal assistance to people taking legal proceeding to vindicate their rights (this is subject to certain conditions)
- (f) Taking legal proceedings to vindicate human rights in the State
- (g) Consulting with relevant national and international bodies around human rights or equality issues
- (h) Providing or assisting in the provision of education and training on human rights and equality issues
- (i) Carrying out equality reviews and preparing equality action plans
- (j) Conducting inquiries into possible violation of human rights or equality of treatment obligations in the State.

124. The Workplace Relations Commission was established under the Workplace Relations Act 2015 and is a body which provides a wide range of effective remedies in cases relating to gender discrimination in employment. It provides for the resolution, mediation and adjudication of disputes and complaints relating to contraventions of, or entitlements under, certain enactments governing the employment relationship between employers and employees. The functions of the Commission include promoting and encouraging compliance with employment legislation, providing information to employees, employers and trade unions, conducting research and advising the Government.

125. Complaints relating to gender discrimination in pay, access to employment, training or promotion are made to the Commission via the Commission website. The Director General may, if he/she considers the matter to be suitable for resolution by means of mediation, refer such complaint to a Mediation Officer. Otherwise, he/she will refer the matter to an Adjudication Officer for adjudication.

126. Adjudication hearings are held in a manner that is less formal than a Court. The adjudication officer can ask questions of each party and of any witnesses attending. He or she will give each party the opportunity to give evidence, to call witnesses, to question the other party and any witnesses, to respond and to address legal points. Witnesses may be allowed to remain or may be asked to come in only for their own evidence. The adjudication officer will decide what is appropriate, taking into account fair procedures, arrangements which will best support the effective and accurate giving of evidence and the orderly conduct of the hearing.

127. The person who is making the complaint may be accompanied and represented at the hearing by:

a) a trade union official b) an official of a body that, in the opinion of the Adjudication Officer, represents the interests of employers, c) a practising barrister or practising solicitor d) in the case of a complainant who is aged under 18, a parent or guardian (as well as one of the people already listed) e) any other person with the permission of the adjudication officer.

128. The adjudication officer makes a decision in accordance with the relevant law and the decision is given to the parties in writing. Either party may appeal the decision in writing to the Labour Court within 42 days of the date of the decision. If no appeal is lodged after this period, the decision is legally binding and may be enforced through the District Court.

129. The employer has 56 days in which to carry out the decision of the adjudication officer. If the employer fails to do so, the employee, the Workplace Commission, the employee's trade union or excepted body (an excepted body is a body that represents the interests of a particular group of workers) may apply to the District Court for an order directing the employer to do so.

130. The Commission employs inspectors who have the power to carry out inspections in relation to employment legislation. Inspectors may enter premises at reasonable times, interview employers and employees, take statements, examine and take copies of records and initiate legal proceedings. If necessary, inspectors may be accompanied by other inspectors or the Gardaí. They may apply to the District Court for search warrants. Inspections are either carried out to investigate a specific complaint, or else a team of inspectors may carry out random or targeted inspections in a particular sector of employment. Where an initial inspection of records finds that there have been breaches of employment law, the Inspection Services may: a) Issue a letter asking the employer to correct this, or b) refer the matter to legal services for prosecution, or c) carry out a further inspection.

131. An inspector may serve a compliance notice on an employer if satisfied that a contravention of the relevant legislation has occurred. This notice specifies how that contravention is to be rectified. An employer may appeal against the compliance notice to the Labour Court within 42 days. There is a further appeal from the decision of the Labour Court to the Circuit Court. It is an offence for an employer to fail to comply with a compliance notice.

132. In response to the allegation of UWE that there has been a reduction in the number of labour inspectors and funding to the Labour Inspectorate due to budget restrictions in Ireland, the Government submits that the Workplace Relations Commission inspectors play a vital role in preventing breaches of employment legislation in Ireland and have adequate resources to do so, as outlined above. The document referred to by UWE as the source of the allegation regarding inspectors relates to the Irish Health and Safety Authority. This body carry out inspections to enforce standards of health and safety in workplaces, and to reduce occupational

accidents. This body has no role in the implementation of gender pay equality and is irrelevant to the issues of this complaint.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

133. The Committee recalls that under Articles 4§3 and 20.c of the 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.

134. 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.

135. 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.

136. 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).

137. As regards Ireland, the Committee notes that Section (6)(2)(a) the Employment Equality Act of 1998 prohibits discrimination in the employment relationship on the grounds of gender. Section 19 of this Act guarantees the right to equal pay for work of equal value. The Committee further notes that Section 7 of this Act defines equal work.

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

Effective remedies

139. 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.

140. 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.

141. 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).

142. 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.

143. As regards access to courts in Ireland, the Committee notes that claims are brought under the Employment Equality Acts 1998 to 2015, the Equal Status Acts 2000 to 2015 and the Pensions Acts 1990 to 2015. The Workplace Relations Commission has a target waiting time of three months from the commencement of proceedings to the date of hearing and the decision to be rendered within four months of the commencement of the case.

144. Each claimant must bring their own case as it is based on the individual contract of employment. The Irish Human Rights and Equality Commission, however, has extensive powers to carry out equality reviews, inquiries, etc. Civil legal aid is not generally available for claimants in respect of gender discrimination. The Human Rights and Equality Commission may provide legal assistance to a person who in their opinion needs such assistance where there is a point of principle involved.

145. The Committee notes that the national legislation provides for a shift of the burden of proof in gender discrimination cases. Section 85A of the Employment Equality Act 1998 provides that where in any proceedings facts are established by or

on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

146. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Ireland 2018 that the adjudication officer of the Workplace Relations Commission may order in respect of equal pay arrears of remuneration not earlier than three years prior to the date of reference of the claim with an order for ongoing equal pay, and an order for compensation for the effects of acts of discrimination or victimisation. In equal treatment cases, there may be an order for compensation of up to a maximum of two years' remuneration or €40,000, whichever is greater and/or an order for a specified course of action. As regards limits to compensation, the Committee notes that there is no limit to compensation that can be claimed before the Circuit Court.

147. The Committee considers that insofar as there are no major obstacles to access courts and as legislation provides for shifting the burden of proof and does not impose a limit to compensation, the obligation to ensure access to effective remedies in case of pay discrimination has been satisfied.

Pay transparency and job comparisons

148. 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.

149. 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.

150. 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).

151. 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.

152. 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.

153. As regards job comparisons in Ireland, the Committee refers to its conclusion on Article 20 (Conclusions 2012 and 2016) where it considered that the Employment Equality Acts allow, in certain circumstances, for job comparisons to extend outside the company directly concerned. Section 2 (2) of the Acts refers to "associated companies" which is defined as follows: "For the purposes of this Act, two employers shall be taken to be associated if one is a body corporate of which the other (whether directly or in directly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control". Additionally, Section 19 of the Acts, which deals with the entitlement to equal remuneration for women and men, refers to where someone is "employed to do like work by the same or an associated employer".

154. The Committee notes that the scope of job comparisons may extend across companies, where these form part of a group of companies owned by the same person or controlled by a holding or a conglomerate. Therefore, the obligation to enable job comparisons has been satisfied.

155. With respect to pay transparency, The Committee also notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Ireland 2018 that Section 7 of the Employment Equality Act 1998

requires that a claimant must have a comparator of the opposite sex. A hypothetical comparator is not allowed. Section 7(1)(c) lays down parameters for establishing the equal value of the work performed. The parameters are skill, physical or mental requirements, responsibility and working conditions.

156. The Committee further notes from the above mentioned Country Report that Ireland has not yet taken the necessary measures to ensure the application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency. Certain pay transparency measures are part of the Programme for Partnership Government. The Department of Jobs, Enterprise and Innovation has published Ireland's National Plan on Corporate Social Responsibility 2014-2016, which provides, *inter alia*, for equal pay audits. The National Strategy for Women and Girls 2017 to 2020 refers to actions to deliver the Programme for Government to include:

- Action 1.22 to initiate dialogue between unions and employers aimed at addressing the gender pay gap;
- Development of practical tools to assist employers in calculating the gender pay gap within their organisations and to consider its aspects and causes, mindful of obligations regarding privacy and data protection; and
- Action 1.23 to 'promote wage transparency by requiring companies of 50 or more workers to complete a wage survey periodically and report the results.'

157. The Committee also notes in this respect that, as stated by EQUINET in its observations, while the claimant has a right to information under Section 76 of the Employment Equality Acts 1998-2015, there is no obligation on the employer to provide this information. As a result, it can be very difficult for claimants to prove an equal pay case. EQUINET also underlines that the best means of increasing wage transparency is the introduction of pay reporting.

158. However, the Committee further notes from the Gender Equality Report between women and men in the EU of the European Commission (2019) that in Ireland the General Scheme of the Gender Pay Gap Information Bill was approved on 26 June 2018. The Minister will be required to issue regulations requiring employers to publish information on the pay of their workers to demonstrate whether there are differences in the pay of male and female workers and, if so, the scale of such differences. The Minister must have regard to the cost of complying with such regulations. These regulations will not apply to employers with fewer than 50 workers. For the first two years, the legislation will apply to employers with over 250 workers and the upper limit will be lowered to 150 workers within 3 years. The new law requires that the mean and median rates of pay be published annually for each group of workers. The Irish Human Rights and Equality Commission may lodge an application to the court in case of alleged breaches of the equal pay legislation. In addition, the enforcement powers of the Workplace Relations Commission will be broadened in cases of alleged breaches of the legislation.

159. The Committee notes that the measures to improve pay transparency are still underway, in particular as regards those foreseen under the Gender Pay Gap Information Bill, which has now been adopted. In this context, the Committee considers 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 in practice.

160. In view of the above, the Committee considers that as regards the obligation to ensure pay transparency in practice, it has not yet been satisfied, pending the implementation of the measures foreseen under the Gender Pay Gap Information Bill.

Equality bodies and other institutions

161. 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.

162. 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.

163. 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.

164. 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.

165. The Committee notes from the Report on gender equality on Ireland of the European Network of Legal Experts in Gender Equality and Non-Discrimination (2018) that the Irish Human Rights and Equality Commission is an entirely independent body. The Commission has extensive powers to carry out equality reviews, inquiries, etc. The Commission may of its own volition or upon request by the Minister for Justice and Equality conduct an inquiry if it considers that within any body, institution, sector of society or geographical area, there is evidence of a serious violation of human rights or equality of treatment obligations in respect of a person or a class of persons. The Commission may also conduct an inquiry upon evidence of systematic failure to comply with human rights or equality of treatment obligations where the matter is of grave public concern and it is in the circumstances necessary to carry out such an inquiry.

166. The Committee further notes that the Commission may invite a particular undertaking (an activity giving rise to employment), a group of undertakings, or the undertaking making up a particular industry or sector thereof to carry out an equality review in relation to that undertaking or those undertakings or prepare and implement an equality action plan in respect of the undertaking or those undertakings or both. The Commission may carry out an equality action plan in any undertaking where there are more than 50 workers.

167. The Committee notes that according to the Irish Human Rights and Equality Commission Act 2014, the Commission is involved in equality reviews and equality action plans (Section 32) and inquiries (Section 35). Under Section 36, the Commission may serve equality and human rights compliance notices on persons, which may require (in 5 b) that the person on whom it is served does not commit or to cease committing, as the case may be, the act or omission concerned or where appropriate, to comply with the equality clause or equal remuneration term. Under Section 41, the Commission can institute legal proceedings. Moreover, as regards other functions, the Commission has the competence to provide independent assistance to victims. The Commission has the competence to conduct independent surveys and publish independent reports. It is empowered to undertake, sponsor, commission or provide financial or other assistance for research and to prepare and

publish, in such manner as it sees fit, reports including research reports. The Committee also has a number of statutory powers with respect to awareness raising, training and education.

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

Concluding assessment

169. Firstly, the Committee notes that the principle of equal pay has been incorporated in the legislation.

170. Secondly, the Committee considers that the obligation to ensure access to effective remedies in case of pay discrimination has been satisfied.

171. Thirdly, the Committee considers that the lack of pay transparency is a major obstacle for victims of pay discrimination to prove discrimination and thus effectively enforce their rights. Pay transparency is an enabling tool for workers or social partners to take appropriate action, such as to challenge pay discrimination before national courts. Therefore, the Committee considers that in view of the fact that the pay transparency is not yet guaranteed in practice, pending the implementation of an appropriate legal framework, the situation is not compatible with the Charter.

172. Finally, the Committee notes that the Irish Human Rights Commission has a broad mandate to promote gender equality. Therefore, the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

173. The Committee therefore holds that there is a violation of Articles 4§3 and 20.c of the Charter as pay transparency is still not guaranteed in practice.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

174. Article 20.c of the Charter reads as follows:

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: (...)

...

c. terms of employment and working conditions, including remuneration;”

A – Arguments of the parties

1. The complainant organisation

175. UWE is of the view that the Government’s submissions include only very few relevant and reliable figures. In 2016, the EU confirmed the figures of 14.4% for the gender pay gap in Ireland and 16.3% in the EU. It also confirmed that the gender overall earnings gap in Ireland stood at 34.7% (the average gender overall earnings gap in the EU is 41.1%, Eurostat figures, 2010).

176. UWE considers that to assess the reality of this pay gap, it must be corrected or refined with other indicators and data. The indicator which the Government relies on is very different as regards the calculation basis. There has been stagnation in relation to it in recent years. As it is based on hourly wages, it 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. There is a need for another indicator such as the pay gap based on gross annual wages of full-time and part-time workers. UWE considers that in almost half the cases workers do not choose voluntarily to work part-time; it is forced on them.

177. UWE states that in its reply, the respondent state merely refers to the applicable legislation and the major public policy exercises such as the various equality plans which are vital in 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 significant shortcomings.

178. UWE asserts that little or 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 various obstacles to promotion and access to positions of responsibility, the greater number of vocational training courses of a higher standard available for men, the large number of benefits in kind for men and the small number 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. According to UWE, given the inadequacy of the conventional tools for combating discrimination and protecting victims, the respondent state has failed to take appropriate and sufficient measures.

2. The respondent Government

179. As regards the obligation to maintain meaningful statistics on needs, resources and results, according to the Government, statistics are maintained by the Central Statistics Office and by the Workplace Relations Commission in relation to complaints submitted to this body. These statistics are used to inform policy development in this area.

180. According to the Government, it continues to strive to eliminate the gender pay gap through a range of multi-stakeholder policies. This was a priority listed in the current Programme for a Partnership Government and is being pursued through the National Strategy for Women and Girls, 2017-2020, a wide-ranging document that sets specific and time measured goals that will make a real difference to the position of women in Ireland.

181. The Government submits that it has been engaged in public consultation on the gender pay gap. All interested parties have been invited to give their views on the factors creating the gender pay gap, the actions that need to be taken; and whether they can contribute to implementing those actions. The Government has engaged in regular reviews of policy with regard to equal pay and all policies are formulated with an exact timetable in mind. The most up to date policy in this regard is the National Strategy for Women and Girls 2017-2020. This is a detailed document that creates a clear action plan across the area of gender equality, involving a broad range of stakeholders and details the required actions and the timeframe for doing so. The current Programme for a Partnership Government includes a commitment to take measures to reduce the gender pay gap.

182. The Government further states that the National Strategy for Women and Girls for 2017-2020 includes a number of measures that will continue to improve socio-economic equality for girls and women in Ireland, and in particular reduce the gender pay gap. This is a multi-departmental project and also includes the Irish Business Employers Confederation and the Irish Congress of Trade Unions. Measures to reduce the gender pay gap are set out in the Strategy and include:

- Initiating dialogue between union and employer stakeholders to address the gender pay gap.

- Developing and promoting practical information resources to explain and increase understanding of the multifaceted aspects of the gender pay gap and its causes (i.e. traditional role models, gender-segregated education and labour market, the challenges of balancing work and family life, the difference in participation of men and women in family responsibilities, the availability of quality, affordable childcare facilities and out-of-school hours care, and processes within organisations where imbalance needs to be addressed).

- Developing practical tools to assist employers to calculate the gender pay gap within their organisations and to consider its aspects and causes, mindful of obligations regarding privacy and data protection.

- Promoting wage transparency by requiring companies of 50 or more workers to complete a wage survey periodically and report the results.

183. According to the Government, this document contains a range of other measures that will increase the number of women in leadership, particularly in the public service, higher education, sports and politics. It sets specific goals that are time measured, with actions assigned to particular bodies, and review dates set ahead of time.

B – Assessment of the Committee

a) Key figures as regards equal pay in Ireland

184. The Committee notes from Eurostat that in 2006, the hourly gender pay gap stood at 17.2% and at 13.9% in 2010 and 2014. The Committee notes, however, that no statistics are available since 2014. The Committee notes that in the Government's submissions no figures are provided in this respect. The overall earnings gap in 2014 was 36.8%. The adjusted or "unexplained" gender pay gap was at 15.8% 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

185. 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.

186. 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).

187. 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.

188. 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).

189. Under Article 20.c of 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).

190. 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.

191. 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.

192. As regards Ireland, the Committee notes from Eurostat that in 2006 the hourly gender pay gap stood at 17.2% and at 13.9% in 2014. The Committee notes that no statistics concerning the gender pay gap are available since 2014. The Committee considers that the collection of reliable and standardised data is indispensable to the formulation of rational policy that would aim at reducing the gender pay gap.

193. As regards measures taken to reduce the gender pay gap, the Committee notes from the Direct Request on the Equal Remuneration Convention (No. 100) on Ireland (2018) that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) invited the Government to address more effectively the structural causes of the gender pay gap. However, the Government's report to the CEACR did not provide any information in response to this request.

194. The Committee notes from the Direct Request (CEACR) on Discrimination (Employment and Occupation) Convention (No. 111) on Ireland (2018) that the new National Women's Strategy 2017–20 and its Actions 1.21, 1.22 and 1.23 aim to tackle the gender pay gap through, respectively: (i) a package of measures, (ii) dialogue with social partners, and (iii) by promoting wage transparency with companies of 50 or more workers.

195. The Committee notes that as regards the obligation to adopt measures to promote the right to equal opportunities, the Government has introduced multi-stakeholder policies to eliminate the gender pay gap. Ensuring pay equality has been accorded a priority in the Programme for a Partnership Government and is being pursued through the National Strategy for Women and Girls. However, the Committee notes that the Government has not transmitted complete data to Eurostat that would show the evolution of the gender pay gap in the course of the last decade. The Committee considers that in the absence of such information and therefore of indicators of measurable progress, it has not been demonstrated that the obligation to achieve measurable progress in reducing the gender pay gap has been fulfilled.

196. Therefore, the Committee holds that there is a violation of Article 20.c of the Charter.

III. ALLEGED VIOLATION OF ARTICLE 20.D OF THE CHARTER AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES

197. Article 20 of the Charter reads as follows:

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:

(...)

d. career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

198. UWE claims that despite the lack of women managing major companies, there are no national measures to change the situation.

199. The average percentage of women on company boards across the EU is 22.7% according to an EU survey of January 2016 entitled “Gender balance on corporate boards”. A 2016 analysis of parity on boards by Ofi Management shows that Ireland ranked 19th in the EU in this respect. Women accounted for 13.2% of board members.

200. UWE refers to the self-regulation that has been in place since 2011 but contends that it is clearly inadequate to ensure access for the underrepresented gender, i.e. women, to decision-making positions in private companies.

201. According to UWE, the actual situation in practice is that women are under-represented on private company boards. The Government does not provide any proof of actual supervision or effective enforcement of the penalties for failing to comply with the requirement that each gender should hold at least one third of the seats on company boards.

2. The respondent Government

202. According to the Government, in its Programme for Government in 2011, it committed to taking steps to ensure that all State boards have at least 40% of each gender. To this end, various pieces of legislation setting up State boards and committees in recent years have contained provisions requiring appointments to have either a set minimum number of male and female members, or to have, as far as reasonably practicable, an equitable balance between women and men.

B – Assessment of the Committee

203. The Committee considers that Article 20.d of the Charter imposes 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).

204. 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%.

205. Finally, the Committee recalls that in respect of Article 20.d, as for Article 20.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.

206. As regards Ireland, the Committee notes from the European Commission (Gender balance on corporate boards) that there are no legislative quotas in place. However, there is a policy target of 40% female participation on all state boards and committees. Positive action measures in public section employment are also implemented.

207. According to the data provided by EIGE (the European Institute for Gender Equality) up to April 2019, the Committee takes note of the evolution of the female participation on boards of large listed companies: in 2010, it stood at 16.5%; in 2017, at 17.6% (the EU average was 25.3%); in 2018, at 18.1% (EU average was 26.7%); and in 2019, at 22.4% (EU average was 27.8%). The Committee notes that this rate remains low. The Committee notes that the Government has taken certain measures to meet its positive obligation to tackle vertical segregation of women in the labour market. However, these measures have not led to a balanced representation of women in decision-making positions in private companies nor to a clear trend for improvement. The Committee therefore considers that the obligation laid down by the Charter in this respect has not been satisfied.

208. The Committee holds that there is a violation of Article 20.d of the Charter.

IV. REQUEST FOR COMPENSATION

209. 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.

210. 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 recognition and enforcement of the right to equal pay for work of equal value,
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 13 votes to 2, that there is no violation of Articles 4§3 and 20.c of the Charter as regards access to effective remedies;
 - unanimously, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the pay transparency is still not ensured in practice;
 - by 13 votes to 2, that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies;
- unanimously, that there is a violation of Article 20.c of the Charter on the ground that there is an absence of indicators showing measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- unanimously, that there is a violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies.



Krassimira SREDKOVA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary