



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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Ireland
Complaint No 132/2016

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

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 132 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

Represented by Ms Anne Nègre, member of the Versailles Bar

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Respondent: Ireland

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

In its observations dated 14 December 2016, the High Contracting Party, Ireland, stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

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

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

1. On the analyses and arguments in support of the complaint

Ireland's comments are surprising given the considerable, detailed and substantiated documentation submitted proving unequal pay between women and men, and the discrimination suffered by women on account of the unsatisfactory action taken by this country to ensure equality.

The collective complaint includes factual information relating to the country, detailing the inequalities in salaries, describing the difficulties and the shortcomings of the policies pursued. There is clear evidence provided, but this is still not enough for this country. The Irish observations relate to the merits and certainly not to admissibility. Any country which upheld women's rights would not fail to acknowledge the inadequacy of its efforts to apply the Social Charter rather than deny the fact that there is inequality. Ireland is doing all it can by putting forward arguments on the merits, claiming that they relate to admissibility.

First of all, there are the international texts which are applicable in this country but which are not complied with (complaint, pages 13, 14 and 15). The collective complaint clearly indicates the texts acknowledged to be in force in Ireland (complaint, page 16).

The collective complaint also makes explicit the ineffectiveness of the texts in force in this country, the monitoring mechanisms which are powerless to reduce this inequality; the tasks and resources assigned to these monitoring bodies are insufficient (complaint, pages 17 and 18) demonstrating the unsatisfactory way in which these issues are dealt with in this country. The various key areas of inequality are specifically referred to in detail. Ireland knows this and its allegations of inadmissibility are without substance and relate to the merits.

In point of fact, the figures quoted refer to Ireland:

- *“The country where inequality among the middle class increased most is Ireland” (Doc. 15, page 23).*
- In 2014, the average pay gap between women and men was 16.4% in the EU and 14.4% in Ireland (Doc. 16 page 10).
- 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 stands at 34.7% (the average gender overall earnings gap in the EU is 41.1%)” (Eurostat figures, 2010, Doc. 20).
- In 2015, in its Gender Equality Index, the EU’s European Institute for Gender Equality (EIGE) calculated that the median index for the EU was 52.9% while that of Ireland was 56.5% (Doc. 26), etc.

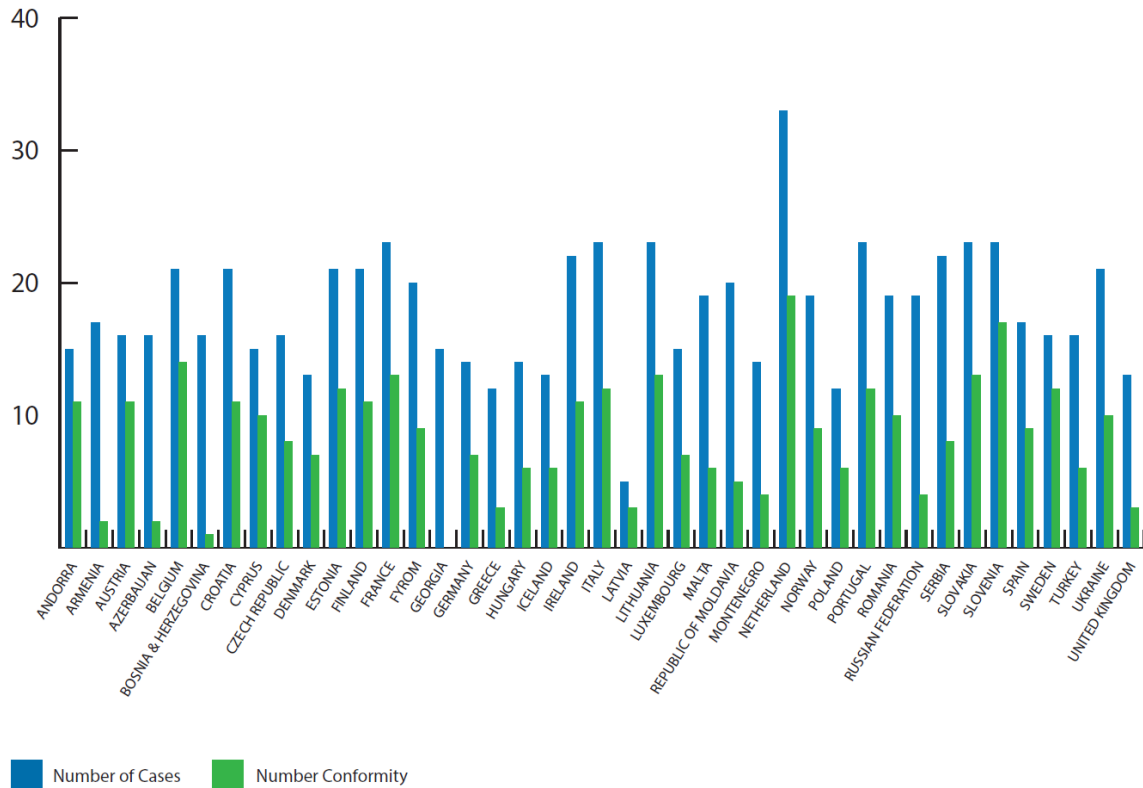
In Ireland, the possibilities of comparison are limited. Accordingly, Ireland can shift the burden to companies and the various sectors. Since inter-company comparators are limited, the courts are obliged to always make comparisons between the same companies. The country must bear responsibility if the legal framework is not amended by new legislation.

Similarly, while *“there is an Equality Authority in Ireland which carries out investigations and surveys. It has devised an equal pay review tool (Doc. 13/1, page 22) and stated that a positive duty to promote equality should apply in all areas and this duty would soon be included in its programme (complaint, page 17),* its shortcomings are the responsibility of the country, as too are the judicial procedures which are not as efficient as they should be in this field, as litigation has shown.

How can Ireland fail to see a correlation between the comments on the labour inspectorate (complaint page 17, P. 13/1, 42, etc.) and the violations of the Charter? A female employee who suspects unequal pay when compared with a male colleague cannot prove it without the intervention in practice of the Labour Inspectorate to verify it at enterprise level. The Labour Inspectorate has the legal means of demanding to see work contracts and pay slips; a female employee cannot do this. If there are few inspectors, if their budgets have been reduced and if they do not have these duties, regarded as priority duties, then the Charter has been violated because the state fails to take the necessary steps to ensure that there is, in practice, equal pay for equal work in the country. The conditions of access to justice are at the employee’s risk.

Ireland could have a law obliging companies to publish comparisons between posts and making such data available to employees. The burden of proof would not then lie with the weakest. There continues to be a pay gap in the country and accordingly, the Charter is not being applied as it should. Everything is demonstrated in detail and substantiated. All the many documents submitted show this to be the case.

The “European Committee of Social Rights Conclusions in a Nutshell 2012-2015”, produced as document 38 shows that with regard to the articles relating to labour rights, including the right to a fair remuneration (Article 4), Ireland has an insufficient level of conformity.



Document 46 concerns the conclusions of the ECSR on Article 4 - Right to a fair remuneration, Paragraph 3 - Non-discrimination between women and men with respect to remuneration in relation to Ireland:

“The Committee takes note of the information contained in the report submitted by Ireland, as well as of the information contained in the previous report (registered on 11 October 2010 and 1 December 2010), which was not examined by the Committee because of its late submission.

Legal basis of equal pay

The Committee refers to its conclusion under Article 20 (Conclusions 2012) in which it noted that the situation was in conformity with the Charter as regards the legal framework for equal rights. The Committee asks the next report to indicate whether the right to equal pay for work of equal value is explicitly provided for in the legislation.

Guarantees of enforcement and judicial safeguards

The Committee refers to its conclusion under Article 20 in which it noted that there is a ceiling on the amount of compensation that may be awarded by the Equality Tribunal. However, if the case is instead referred to the Circuit Court, the normal ceiling on awards will not apply and the Court may order compensation as appropriate in the case.

Methods of comparison and other measures

The Committee refers to its conclusion under Article 20 of the Charter in which it found that the situation was in conformity with the Charter, as regards the possibility of comparison of pay and jobs outside the company directly concerned.

The Committee takes note of the ongoing reform of equality and human rights infrastructures. It also notes that the Equality Authority's Equality Mainstreaming Unit has funded research to produce and test a Gender Pay Review Template for equal pay audits and includes guidance on job evaluation methodologies. The template is seen as the most effective way of establishing whether an organisation is providing equal pay. The Committee notes that this template has the potential to highlight any discriminatory issues that may arise. The Committee wishes to be kept informed about the results.

The Committee takes note of the statistical information provided in the report concerning the pay gap. It notes in particular that there has been a narrowing of the gender pay gap in Ireland in recent years. Originally estimated at 21.7% in 2003, it came down to 13.9% in 2011.

The Committee also notes the gender breakdown of employment by sector and level of responsibility.

The Committee asks what the adjusted pay gap is for work of equal value.” (Doc. 46).

With regard to women in decision-making positions, the Charter is not applied because all the conditions must be put in place to ensure equal pay between women and men without any discrimination. The fact that there are so few women in decision-making positions is evidence of discriminatory treatment against women in Ireland which is clearly in violation of the Social Charter (complaint, pages 17, 18 and 19 and the documents cited).

The comment in paragraph 12 is not clear. All the documents submitted prove that there is unequal pay for equal work between men and women. One only has to itemise them to see that the Social Charter has been violated, since there is an actual, proven and inescapable situation which is publicly acknowledged throughout the reports submitted by the state itself. Are the state's own words not to be considered reliable when it acknowledges this inequality before institutions such as the International Labour Organisation (ILO) and the Committee on the Elimination of Discrimination against Women (CEDAW) or when it itself explains the weaknesses in its policies?

Despite considerable pay inequality between women and men Ireland believes that it has satisfactorily implemented the provisions of the Social Charter which is absolutely not the case.

2. Concerning the number of collective complaints and consultation among states

The European Committee of Social Rights will notice similarities in the observations of certain states. Indeed this consultation is confirmed by the observations of the Netherlands in which it is stated (page 1, paragraph 6): *“Having become aware of the submission of fifteen similar*

complaints, it was agreed between the Government Agents that each of the respondent states will formulate its own observations on admissibility.”

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

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

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

The UWE’s complaint should therefore be declared admissible

ON THESE GROUNDS

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

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

and to examine this collective complaint on the merits.

19 March 2017

A handwritten signature in black ink, appearing to read "Anne Marie". The signature is written in a cursive style with a horizontal line above the name.