



European  
Social  
Charter

Charte  
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COUNCIL OF EUROPE



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

1 February 2018

**Case Document No. 7**

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

**RESPONSE FROM THE UWE TO THE GOVERNMENT'S  
SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 11 January 2018**





Versus : Ireland

## **I. PROCEDURE**

University Women of Europe, UWE / le Groupe Européen des Femmes Diplômées des Universités, GEFDU, lodged a collective complaint against Ireland on 24 August 2016 regarding two violations of the European Social Charter:

- Firstly, concerning the lack of equal pay for women and men for equal, similar or comparable work,
- Secondly, concerning the under-representation of women in decision-making posts in private companies.

The European Committee of Social Rights set 15 December 2016 as the deadline for submission of the respondent state's observations on admissibility.

By letter dated 14 December 2016, Ireland requested that the European Committee of Social Rights declare the collective complaint by UWE inadmissible.

By letter dated 31 January 2017, Mr Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights, invited UWE to submit a response to the states' observations by 28 February 2017. The same day, UWE requested equal treatment with the states in terms of receiving translations of the observations so as to avoid any misinterpretations. On 7 February 2017, UWE was notified that the deadline for submitting the responses was extended to one month after transmission of the translation of the observations. This deadline included the replies to the observations in French by the Governments of France, Belgium and Italy.

UWE submitted its response to the respondent state's observations on admissibility on 19 March 2017. The respondent state was granted a deadline extension to 2 June 2017 to submit its observations, which it did on that date. Under the applicable procedure, the applicant cannot reply to them.

On 4 July 2017, during its 293rd Session, the European Committee of Social Rights "declare[d] the complaint admissible in respect of Articles 1, 4, 4§3, 20 and E of the Charter".

The European Committee of Social Rights "invite[d] the Government to make written submissions on the merits of the complaint by 13 October 2017". This deadline was extended to 3 November 2017 by letter dated 21 September 2017. On 13 October 2017, in its submissions on the merits of the complaint, Ireland held that the collective complaint by UWE should be declared unfounded because Ireland complied with the provisions of the Charter, and rejected UWE's claim for compensation of €10 000 excluding tax for the time spent and expenses incurred in the current proceedings.

The deadline for UWE to lodge its response on the merits was set at 12 January 2018, following receipt of the French translations.

The European Trade Union Confederation, ETUC, intervened in the procedure on

3 November 2017 and submitted substantive observations on the merits:

“This collective complaint – as all the other 14 complaints concerning the same issues – is of great importance for the full realisation of the very fundamental right of women to non-discrimination. In particular, the continuous denial of equal pay for work of equal value is one of the fundamental problems which still remain in European societies. From the ETUC’s point of view it is necessary to come to the following conclusions of a violation of Article 20 of the Charter in relation to the Gender pay gap in its substantive (see above II.C.1.a)) and procedural dimensions (see above II.C.1.b)) as well as in relation to the under-representation of women in decision-making bodies also in its substantive (see above II.C.2.a)) and procedural (see above II.C.2.b)) dimensions. The Committee might thereby also in particular consider to take account of the recommendations/observations/concerns expressed by the international bodies referred to in II.A. addressed to the respondent state” (ETUC, § 112 to 114).

UWE takes account of these observations and refers to them. UWE also reiterates the points in its complaint of 24 August 2016.

In view of the observations in response, the European Committee of Social Rights will find violations of the Social Charter in respect of the aforementioned Articles 1, 4, 20 and E on account of the lack of equal pay for women and men for equal, similar or comparable work and the under-representation of women in decision-making posts in private companies.

## **II. THE OVERALL ARGUMENTS OF THE RESPONDENT STATE**

The European Committee of Social Rights regularly reiterates the following:

“The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality, solidarity and other generally recognised values. It must be interpreted so as to give life and meaning to fundamental social rights” (FIDH v. France, Complaint No. 14/2003, 8 September 2004, § 27, 29; DCI v. the Netherlands, Complaint No. 47/2008, 20 October 2009, § 34).

It was in this spirit of promoting dignity, autonomy, equality and solidarity so as to give life and meaning to fundamental social rights that UWE lodged this collective complaint concerning female workers in Europe and, more particularly, in the respondent state. These women are still waiting for equal pay for women and men and to be able to hold decision-making posts on an equal footing with men on account of their abilities.

There is total unanimity among all information sources and academic publications, all public and private research conducted at national, European or international level and communicated in whatever form, the statistics produced by the respondent states themselves and those from other states, and the reports by the ILO, the CEDAW, the various national, European and international institutions, as well as various forums and colloquies, that pay for women and men is unequal in all countries and that women are under-represented in decision-making posts.

The outlook of the world in which European men and women currently live is still, as ever, exclusively masculine.

Even though equality is a driving force for the economy, even though the now-quantified cost of the violence against women may represent a very large share of national budgets and even though everything which can play a part in empowering women would help to combat this terrible scourge in our societies, equal pay for equal work and equal representation in decision-making posts are both sorely lacking in Ireland.

The Global Gender Gap Report (2017) estimated that it would take 217 years to close the global economic gender gap (<https://www.weforum.org/agenda/2017/11/women-leaders-key-to-workplace-equality>).

The World Economic Forum Global Gender Gap Report (2016) had estimated that it would take 170 years to close the gender gap ([http://www3.weforum.org/docs/GGGR16/WEF\\_Global\\_Gender\\_Gap\\_Report\\_2016.pdf](http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf)).

In 2016, [Ireland was ranked 6th on the global gender gap index](#). ([ibid, p. 10](#); <http://www.ecardshack.com/c/global-gender-equality-gap/>).

In 2017, Ireland was ranked 8th, so it had fallen back two places ([http://www3.weforum.org/docs/WEF\\_GGGR\\_2017.pdf](http://www3.weforum.org/docs/WEF_GGGR_2017.pdf), p. 10). In spite of this good score, inequality is rooted in the daily lives of women in the country.

In its submissions, Ireland describes itself as being active in this area, even though the measures are not sufficiently effective.

The actual situation is, however, very different. On 6 July 2017, Irish trade unions urged the respondent state to take action as a matter of urgency:

“Trade unions are to urge the Government to introduce legislation to force organisations with more than 50 staff to reveal data on the average pay gap between male and female employees. The biennial conference of the [Irish Congress of Trade Unions](#) (Ictu) was told on Thursday that such a development would have a massive impact on female earnings. The trade union Impact, which proposed the move, said it would help good employers to boost their brands and compete for the best talent in the labour market. Speaking at the conference Impact lead organizer [Linda Kelly](#) said compulsory reporting of organisations’ gender pay gaps would “shine a light on inequity” and enable consumers to take account of the pay gap when deciding what to buy. She said the gap between average pay for men and women was around 15per cent in the Republic of [Ireland](#), and almost 10 per cent in the north [Northern Ireland]. “At the current rate of action, the [United Nations](#) reckons it will take 70 more years before women’s average pay matches men’s,” she said. Legislation to introduce workplace gender pay gap reporting was adopted in the Seanad, with all-party support, in May. Ms Kelly said the Gender Pay Gap Information Bill 2017 was likely to face a sterner test when it returned to committee stage in the autumn. She urged trade unions and civil society organisations to keep up the pressure to maintain all-party support for the reform. “It will help decent employers to compete for the best talent in the labour market. Just for once, it could have them competing to pay people more. It will empower women to organise and bargain, armed with the facts and with public opinion on their side. And it will enable trade unionists, citizens and progressive organisations to take account of the gender pay gap when making decisions about

how they spend their money.” Ms Kelly said: “Passing the Gender Pay Gap Information Bill would be a strong signal that Ireland doesn’t just care about equal pay, but that we mean to do something decisive about it. Not in 70 years’ time, but now”

(<https://www.irishtimes.com/news/social-affairs/companies-should-reveal-pay-gap-between-male-and-female-employees-1.3145511>)

The national press confirmed that nothing had changed since 2005: “Almost 90 per cent of women in the State do housework compared to less than 50 per cent of men, a gap that has remained the same since 2005, according to an [EU](#) gender equality report. The Gender Equality Index 2017, produced by the [European Institute for Gender Equality](#), is released on Wednesday. It found a persistent inequality in time use across the EU, with gender gaps in unpaid care persisting, and only one in three men engaging in cooking and housework daily” (<https://www.irishtimes.com/news/social-affairs/housework-gender-gap-persists-in-ireland-and-eu-report-shows-1.3251200>)[...]

There is a long history of struggle for equality in the country, as in the others, and it is still going on (Helen Russell, Gender Equality in the Irish Labour Market 1966-2016: Unfinished Business, pp. 408-414; <http://www.esr.ie/article/view/820>).

No country in Europe meets the requirements of the Social Charter, in terms either of equal pay for women and men for equal, similar or comparable work or of the representation of women in decision-making posts, according to an analysis from July 2017 by the European Network of Legal Experts in Gender Equality and Non-Discrimination entitled “The enforcement of the principle of equal pay for equal work or work of equal value”

(<http://www.equalitylaw.eu/downloads/4466-the-enforcement-of-the-principle-of-equal-pay-for-equal-work-or-work-of-equal-value-pdf-840-kb>).

On 20 November 2017, the European Commission communicated to the European Parliament, the Council and the European Economic and Social Committee its “EU Action Plan 2017-2019: Tackling the gender pay gap” ([ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48424](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48424)), setting out eight strands of action:

- “1. Improving the application of the equal pay principle
2. Combating segregation in occupations and sectors
3. Breaking the glass ceiling: initiatives to combat vertical segregation
4. Tackling the care penalty
5. Better valorising women’s skills, efforts and responsibilities
6. Fighting the fog: uncovering inequalities and stereotypes
7. Alerting and informing about the gender pay gap
8. Enhancing partnerships to tackle the gender pay gap”

The 1919 Versailles Treaty, on which the League of Nations was founded, provided the following (Article 427, § 7): “The principle that men and women should receive equal remuneration for work of equal value”

([https://en.wikisource.org/wiki/Constitution\\_of\\_the\\_International\\_Labour\\_Office#Article\\_427](https://en.wikisource.org/wiki/Constitution_of_the_International_Labour_Office#Article_427))

In 2017, this principle is still not respected for all female workers in Europe.

You have to be very far removed from the reality of life in a private company to be unaware of the sense of betrayal felt by women who are underpaid on account of their gender. The vast majority of these women end up resigning themselves to the violations of their fundamental rights because criticising the violations is not well received in the companies themselves, in their families, among their friends or, in many cases, by the judicial system. When women workers actually notice pay gaps (although they are hardly ever able to prove them), the differences are often presented to them as being linked to them as individuals, their more limited performance, their more limited ability, their more limited flexibility or their more limited communication – always something more limited. Accordingly, very few women decide to bring legal proceedings against their employers.

Any attempts to bring such proceedings usually come up against refusal by the employers to answer requests for information, a lack of testimonies from colleagues and a lack of support from staff representatives. The relevant information is only very rarely sought out by the authorities which have the power to do so. While proceedings may be successful, this will be after years of painful, time-consuming, costly and uncertain struggles. In the event of successful proceedings, employers are usually annoyed at having to pay out potentially large sums and harbour grudges against female employees who dared to bring proceedings. That is a fact. It is therefore necessary to warn women workers who are willing to bring such proceedings about the future risks of dismissal, usually for other reasons, as employers would incur penalties for the latter in many respondent states. That is common knowledge, although it is denied by the respondent state, which shows how wide the gap is between governments and practices on the ground.

“Individual proceedings are hard to bear psychologically. Women who do go ahead take great risks and they must be protected” (Rachel Silvera, article in French, [http://www.lemonde.fr/societe/article/2014/03/06/rachel-silvera-la-peur-de-la-sanction-est-un-axe-de-lutte-fort-pour-l-egalite-salariale-hommes-femmes\\_4378483\\_3224.html#3EeScStlwyXdOyTd.99](http://www.lemonde.fr/societe/article/2014/03/06/rachel-silvera-la-peur-de-la-sanction-est-un-axe-de-lutte-fort-pour-l-egalite-salariale-hommes-femmes_4378483_3224.html#3EeScStlwyXdOyTd.99)).

With regard to equal pay and treatment, a Belgian flight attendant, Gabrielle Defrenne, was one of the first women to bring such proceedings, demonstrating great courage and perseverance. She appealed to the Brussels Employment Tribunal in 1970; the proceedings finally ended 10 years later (Cass. 3e ch., 5 May 1980, Pas., 1980, 1095). The case went through the domestic and European courts. Is that what states expect from the millions of short-changed women workers? Must they bring proceedings lasting ten years at their own expense?

At best, states tell women that they have all the rights they need but fail to assert them, so it is their fault if their pay is lower than their male counterparts’. This is a ruthless syllogism.

## **2.1. The conclusions of conformity**

The respondent state seeks to rely on the conclusions of conformity concerning Articles 4§3 and 20 issued regarding its policy by the European Committee of Social Rights during recent supervision cycles in 2014 and 2016. The fact that the European Committee of Social Rights did not during those supervision cycles find that the relevant policies failed to comply with



the Charter does not mean that its analysis covered all the aspects raised by this complaint, in particular because it did not have adequate information for that purpose and for the cause to be heard. Accordingly, the European Committee of Social Rights may acknowledge that the standards in question are in line with the Social Charter but that the practices are disappointing or derisory and are therefore unacceptable.

Moreover, the respondent state emphasises that it responded satisfactorily to the three or four requests by the Committee for more information. However, the Committee did not request additional information regarding other subjects where that was necessary. The submissions by Ireland in this respect must therefore be regarded as irrelevant.

The respondent state itself acknowledges its shortcomings: “The Minister for Justice and Equality, Charles Flanagan TD, and the Minister of State with special responsibility for Equality, Immigration and Integration, David Stanton TD, launched a public consultation on tackling the gender pay gap on 9 August 2017. In the consultation paper (Appendix 7), interested parties are 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” (respondent state’s submissions, p. 14). Note must be taken of this wage inequality and the Social Charter must accordingly be held to have been violated.

## **2.2. The nature of the respondent state’s obligations**

The respondent state against which UWE has lodged a complaint based on Articles 1, 4, 20 and E of the Social Charter reiterates in its submissions, probably on a concerted basis with other respondent states, the idea already put forward in the observations on admissibility, and which did not achieve the desired aim at that stage, whereby the Charter does not impose an obligation of results but merely of means – or, to put this another way but with the same effect, only imposes an obligation of results in terms of passing legislation that meets the requirements of the Charter and possibly setting up institutions to ensure its enforcement, but not in terms of achieving the objectives set.

This is completely at odds with the established case law of the European Committee of Social Rights, which incidentally is cited by some countries, whereby the Social Charter is only complied with, admittedly subject to some exceptions, if legislation in line with its requirements is introduced. That is not enough, however.

In this connection, it is only necessary to refer to the European Committee of Social Rights’ well-established case law (*International Commission of Jurists v. Portugal*, Collective Complaint No. 1/1998, 9 September 1999; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, 5 December 2007, §54; *International Federation for Human Rights (FIDH) v. Ireland*, Complaint No. 110/2014, 23 October 2017).

States also know that they must provide the means of ensuring steady progress towards achieving the goals laid down by the Charter (*Autism-Europe v. France*, Complaint No. 13/2002, 4 November 2003, §53). The Committee wishes to emphasise that implementation of the Charter requires states parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein. It points out that states parties must take steps to achieve

the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.

Similarly, in the decision of 5 December 2007 in *International Movement ATD Fourth World v. France* (Complaint No. 33/2006, 5 December 2007, §60 to 67), the Committee further stressed that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form:

“This means that, for the situation to be in conformity with the treaty, states party must:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter,
- b) maintain meaningful statistics on needs, resources and results,
- c) undertake regular reviews of the impact of the strategies adopted,
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage,
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable”.

The fact that a set of relatively formal 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. Likewise, explicit or implicit references to integrated policies, synergies or networks do not mean that approaches of that kind take hold. Vagueness is not acceptable.

Governments must provide relevant statistical data, and they must compare the actual situation with the requirements to be achieved, the resources employed and the results obtained.

The legislation must therefore produce sufficient effects, through appropriate monitoring and administrative supervision mechanisms that are reasonably regular and effective and judicial remedies that are accessible and reliable, i.e. which are not too expensive and do not involve excessively complex proceedings and are based on rules of evidence consistent with the provisions of the EU directives on discrimination, which the European Committee of Social Rights has held should be regarded as applicable for meeting the requirements of the Charter, in the same way as the concept of indirect discrimination, the provision of evidence for which requires applicants to have access to comparative information that does not identify individuals but provides sufficient insight into the treatment of colleagues or other categories of workers, in order to provide the courts with enough indications for the burden of proof to be placed on the defendants.

Those bringing proceedings must also be protected against any kind of retaliatory measures. Discounting these very ordinary and routine day-to-day retaliatory measures means being very unfamiliar with these issues in the daily lives of women workers.

At the same time, there must be systematic awareness-raising for all parties concerned with the issue of gender equality in employment, pay and positions of responsibility, and the necessary funding must be provided for support measures, in particular, childcare options and all work-life balance measures capable of compensating for the stickiness in representation and the distribution of social roles.

Lastly, irrespective of the indicators showing the final outcomes in terms of gender equality of all the strategies implemented, the results achieved by the various mechanisms must give rise to reliable statistics concerning the action taken: number of checks performed, cases processed by the courts, offences found, penalties imposed and compensation measures ordered by administrative or judicial bodies such as employment tribunals and civil and criminal courts. Neither reducing matters to criminal law nor going too far in the direction of decriminalisation is acceptable. Training for judges, police officers, labour inspectors and other groups is also vital. The EU has produced best practice guides in this connection. ([http://www.equineteurope.org/IMG/pdf/handbook\\_on\\_equal\\_pay\\_-\\_electronic\\_version-2.pdf](http://www.equineteurope.org/IMG/pdf/handbook_on_equal_pay_-_electronic_version-2.pdf)).

In the present case, the information provided by the respondent state – and it is odd that the submissions made regarding the complaints in question criticise the general nature of the complaints while the state itself mostly only makes general comments – still merely takes the form of a description of the legal and institutional framework, there being a general lack of clarifications which could serve to determine the conformity of the policies followed with the requirements of the Charter. This prevents proper assessment regarding the following:

- the relevant powers, staffing levels, numbers of checks, funding, administrative supervisory bodies
- the efficiency of judicial regulation, proceedings, costs, independence, reliability
- the scale of supporting and awareness-raising policies and their proportionality in relation to the seriousness of the stereotypes to be eradicated
- the relevance and accuracy of the figures and statistics supplied, if any, which are mostly too broad or too limited whereas there are public documents from another source which provide more sophisticated or more extensive information
- the lack of a timetable for the measures introduced, the expected evaluation of the results within given timeframes
- case law does not have the expected impact.

The wide range of relevant bodies between which powers that in any case are limited are shared in a manner probably unclear to the women workers concerned is less a sign of dynamism than of dispersion of the efforts made.

It is accordingly in vain that the respondent state, having failed to provide the above-mentioned clarifications either directly or by making specific reference to other accessible and informative sources, refers insistently to the recent adoption of a new body of rules and the recent setting up of new institutions.

However promising they may be, these initiatives do not allow the conclusion that the state concerned has succeeded in meeting the requirements of the Charter. The European Committee of Social Rights has always held that it could not regard the introduction of new rules or new institutions – for which it cannot be predicted whether or not they will produce significant effects within a reasonable time – as contributing from the outset to the conformity of states' policies with the Charter.

The measures taken by the state are ineffective.

### **2.3. The impact of the crisis**

The European Committee of Social Rights has, admittedly, consistently acknowledged that states could not all achieve the objectives set out in the Charter and, as appropriate, any national legislation for that purpose without regard being had to their social conditions, degree of economic prosperity or any adverse circumstances.

However, in the case of gender equality as in other areas, the crisis cannot serve as a pretext for totally or partially giving up the implementation, and still less the pursuit, of the objectives set out in the Charter or legislation passed to implement it, or for placing limits on the efforts involved.

In view of these requirements, the respondent state manifestly fails to meet the specific obligations of the Social Charter; there is a clear lack of resource planning and result measurement. The Social Charter is clearly violated in respect of both complaints.

### **III. THE COMPLAINT OF UNEQUAL PAY FOR EQUAL WORK**

#### **3.1. The lack of appropriate measures**

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.

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 invisible obstacles to promotions for women, 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.

Morgan McKinley's 2016 report will be of interest to the European Committee of Social Rights

([https://www.morganmckinley.ie/sites/morganmckinley.ie/files/gender\\_pay\\_gap\\_in\\_ireland\\_2016.pdf](https://www.morganmckinley.ie/sites/morganmckinley.ie/files/gender_pay_gap_in_ireland_2016.pdf)). The report focuses on factors that have an impact on the gender pay gap, including the higher proportion of women in the sectors and jobs with the lowest pay, the larger number of men in high-level posts (which influences the pay gap), qualification levels, imbalance in flexible working hours between men and women, inadequate experience and lack of statistics.

Given the inadequacy of the conventional tools for combating discrimination and protecting victims, Ireland has failed to take appropriate measures, in particular with regard to a number of points examined below.

- **Protection against discrimination:** One example is the lack of data concerning discrimination complaints in the annual report of the Workplace Relations Commission (WRC). The Equality Tribunal used to provide detailed reports of the cases (broken down by

the grounds of discrimination) on which it had ruled during the year, which was a valuable resource for practitioners and researchers.

Or, for instance, “the limits set on compensation arguably undermine the requirement that sanctions be ‘effective, proportionate and dissuasive’. It is uncertain that the ESA (Equal Status Act) adequately covers social protection and social advantages, due in part to the broad exemption for measures that are required by law. The pursuit of complaints about discrimination in accessing goods and services is hampered by some procedural obstacles. Potential problems with the EEA (Employment Equality Act) include a narrow definition of vocational training, failure to cover beliefs that are not religious in nature”

(<http://www.equalitylaw.eu/downloads/4450-ireland-country-report-non-discrimination-2017-pdf-1-85-mb>, p. 10).

The shadow report by the National Women’s Council of Ireland dated 20 January 2017 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, CEDAW

([https://www.nwci.ie/images/uploads/NWCI\\_CEDAW\\_SHADOW\\_REPORT\\_2017.pdf](https://www.nwci.ie/images/uploads/NWCI_CEDAW_SHADOW_REPORT_2017.pdf)).

This alternative report shows the weaknesses of the measures taken by the respondent state: “While there is a formal requirement that all Memoranda for Government should consider the impact of the proposed legislation on women, there is not yet a mechanism for ensuring this is done systematically. Equality proofing during the drafting of legislation should not be seen as stand-alone but rather as part of an on-going process of analysis which begins at the policy development stage. Given resource constraints it may be impracticable to analyse all policies in depth. Screening tools enable civil servants to identify those legislative proposals which require more detailed attention and analysis. There is, however, a need for equality experts within departments and legal specialists with expertise in gender and diversity analysis to support equality proofing in the policy development process and in the drafting of legislation” (Ibid., p. 2).

“During the 30th Dáil and the 23rd Seanad (2007 – 2012), three committees of the Oireachtas (Irish Parliament) held a specific named remit regarding women’s rights: Select Committee on Justice, Defence and Women’s Rights and Joint Committee on Justice, Defence and Women’s Rights, the latter of which operated a Sub-Committee on Women’s Participation in Politics. Since the 31st Dáil and 24th Seanad (2011 – 2016), the Committee structure has altered to include the Select Committee on Justice, Defence and Equality and the Joint Committee on Justice, Defence and Equality. Thus, women’s rights have been subsumed into the broader ‘equality’ stream of work without a named specific mandate around women’s equality attaching to any Parliamentary committee structure” (ibid., p. 2).

“Funding for the Equality for Women Measure, designed to provide for equal opportunities measures, positive actions and structures to promote gender equality, was reduced from €1.75 million to just under €12 million for the period 2008 to 2013. Accordingly it was only feasible to undertake modest positive actions contrary to what had been envisaged originally”.

The shadow report continues: “When the National Women’s Strategy 2007-2016 was launched, NWCI highlighted the absence of measurable targets, indicators and expected outcomes. What is more, the Strategy did not contain actions or targets to address the inequalities experienced by Traveller and Roma women or other vulnerable groups. Over the period of its lifetime, and in particular at the mid-point review, many civil society groups

called for the development of clear and transparent ways to measure the progress of the Strategy, but such measurement never took place. As such, it is extremely difficult to accurately gauge the impact of the Strategy. In December 2016, the Department of Justice and Equality opened a public consultation process towards the development of a new National Women's Strategy and Action Plan to cover the period 2017-2020. This new plan will be a critical opportunity for the Government to show ambition and vision to addressing women's equality in Ireland and is welcomed by NWCI. Critical to its effectiveness will be a robust monitoring and implementation process with strong political leadership to hold all state bodies and agencies to account.

The 2016 Programme for a Partnership Government contains a welcome commitment to equality and gender proofing budget proposals. Gender proofing can produce gender disaggregated data to assess how women are affected by budgetary measures, particularly taxation and social welfare measures. In addition, it is critical that there is a commitment to utilise the information gained to achieve tangible, positive outcomes for women by reducing social and economic gender inequalities.

The amalgamation of the Equality Authority and the Human Rights Commission into the Irish Human Rights and Equality Commission (IHREC) 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. Concerns have been raised that the organisation's 'equality' function is not bestowed the same degree of focus as its 'human rights' work. There is a critical need for IHREC to work with equality focused NGOs so as to strengthen its work to address discrimination against women and women facing multiple discrimination. In addition, the significant work undertaken by IHREC with regard to Ireland's human rights record at international level requires a similar national strategy to ensure that national government and state agencies are held accountable to equality commitments" (ibid, p. 3).

The women's associations' opinion of the subsuming of the Equality Tribunal into the Workplace Relations Commission is not favourable: "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. An ad-hoc approach to case management, inconsistencies with adjudication rulings and haphazard communication of decisions are all issues that were raised by the barristers, solicitors, employer organisations and trade union representatives who participated in a 2015 survey conducted by the Employment Law Association of Ireland" (ibid, p. 4).

Moreover, the Equality Tribunal has suffered budgetary restrictions which have undermined its efficiency. "In November 2014, the Irish Human Rights and Equality Commission (IHREC) 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 (WRC) in 2015. The impact of this change (if any) on discrimination complaints cannot yet be evaluated”

<http://www.equalitylaw.eu/downloads/4450-ireland-country-report-non-discrimination-2017-pdf-1-85-mb>, p. 5).

In 2015, only 45 persons received assistance in anti-discrimination cases, which is a low figure (ibid., p. 9). At present, the situation is not what would be expected in terms of effectiveness.

A further problem involves barriers affecting access to justice: “Institutional economic barriers. 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” (Shadow Report, p. 6).

- **Lack of supervision:** The European Committee of Social Rights would have liked to have information on the checks conducted by the labour inspectorate, on these economic and social data. The respondent state has not increased the powers of the labour inspectorate in terms of detecting discrimination in companies, as already noted. Ireland gives no indication of the number of checks performed in companies or the follow-up action. Where are the relevant statistics by gender? Likewise, no indications are given concerning the funding allocated (respondent states’ submissions, p. 10).

It may be noted that a number of studies suggest that under-reporting of discrimination and the lack of responses to perceived discrimination are major problems (Equality and Rights Alliance (2013) Access to Justice and Under-Reporting of Discrimination and Human Rights Abuses,

<http://www.eracampaign.org/uploads/Underreporting%20and%20access%20to%20justice%20september%202013%20final%20new%20format.pdf>;

Central Statistics Office (2015) QNHS Equality Module Quarter 3 2014,

[http://pdf.cso.ie/www/pdf/20150902123751\\_QNHS\\_Equality\\_Module\\_Quarter\\_3\\_2014\\_full.pdf](http://pdf.cso.ie/www/pdf/20150902123751_QNHS_Equality_Module_Quarter_3_2014_full.pdf)).

Far from accepting the situation submitted to it for examination, the European Committee of Social Rights itself requested during the last supervision cycle “that the next report provide updated information on the status of women in employment. It wishe[d] to be kept informed on the implementation of all positive actions/measures/programmes taken to promote gender equality in employment and to reduce the gender pay gap” (Conclusions 2016, Ireland).

The ETUC states: “Moreover, from a procedural perspective, it appears evident that there is also a violation as the result of eliminating the gender pay gap is not achieved. In particular, it is obvious that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient:

- in principle, the **labour inspectorate** should (be able to) ensure the satisfactory application of this important principle; despite the fact that the respondent State has ratified ILO

Convention No. 81 on labour inspection it is obvious that this is not the case (in particular taking into account the nearly total lack of supervision in the SMEs);  
- all **other means** to ensure the satisfactory application of the principle of equal value have proven insufficient. 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” (ETUC, § 105 & 106).

UWE is bound to agree with the ETUC’s position.

- **Measures taken in companies:** To judge by the respondent state’s observations, the companies in question are the largest ones; nothing concerns the others with the largest numbers of women workers. The results are obviously inadequate.

The ETUC’s observations point out that the official statistics exclude small enterprises, making it possible arbitrarily to indicate better wage equality figures: “From a substantive perspective, there are at least the following elements which should (at least in combination) lead to a violation of Article 20 ESC: Statistical evidence (see above para. 96) shows that there is still a gender pay gap. Even if it might have been reduced during the last time **any** Gender pay **gap** does not fulfil the non-discrimination requirement based on sex. The official statistics are still excluding **small (micro) sized enterprises**. It is therefore most probable that the Gender pay gap is even higher in these enterprises. 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” (ETUC, § 103, 104).

UWE agrees with the ETUC.

### 3.2. Statistical data

The respondent state’s submissions include only very few relevant and reliable figures. UWE has referred to women who may wish to make complaints finding it hard or impossible to obtain comparative data concerning the wages paid. Several respondent states pretend not to understand the nature of the complaint and present irrelevant arguments concerning the risks of breaches of the principle of the confidentiality of personal data or powers which labour inspectorates allegedly have to obtain the necessary information. However, what these powers actually involve remains obscure and no figures are provided on cases where they are used.

The principle of confidentiality which the country apparently wishes to employ at least in part, but to an extent that is hard to assess, has never prevented the prohibition of discrimination between workers, the punishment of such discrimination by various procedures, the nullity of contracts which breach the prohibition or appropriate compensation.

It is no more acceptable, whether with regard to the gender pay gap or balanced participation of women and men in decision-making in private companies or indeed public bodies, for a country to use the pretext of its current position in relation to the European average for not having to make improvements in areas where its performance is only average.



The issue which all the complaints lodged by UWE seek to raise very deliberately is the persistence of a very low actual level of practical results, in spite of the protestations of good will, in most of the countries where the complaints are calling for the situation to be reviewed.

The same difficulties occur in all countries. “There is a difficulty in all countries in terms of objective measurement of income inequality. All tools are constructs based on standards set by statisticians. Is that to say that you can make figures say what you like? Certainly not, but if a social phenomenon is to be fully understood, it is necessary properly to grasp the tools used to measure it, including their upsides and downsides. Yet there is usually a great poverty of public debate on this subject. Of course, the tools have a political dimension, which is sometimes not properly mastered, but that is another story”, conclusions of an article in French (Observatoire des Inégalités, 29 August 2016, “Comment mesurer les inégalités de revenus”; <https://www.inegalites.fr/Comment-mesurer-les-inegalites-de-revenus>).

As already stated, the situation is very different from the one described in the respondent states’ submissions. The respondent state makes choices so that one or other criterion is included in its statistics and others are excluded in an attempt to conceal greater wage inequality than it admits to. However, the respondent state does acknowledge that there is inequality; that has to be noted.

### 3.3. Structural effects and stereotypes

Whatever the case, the existence of structural effects, the impact of stereotypes that are hard to change or the complexity of the reasons for the persistent pay gap or differences in career development between men and women cannot serve as excuses for lack of progress towards meeting the requirements of the Charter.

From this point of view, the concentration of female and male workers in different sectors, with particularly large numbers of women in the education and health and social sectors, is not acceptable as an argument for justifying the pay gaps noted when the Charter refers to equal pay for equal work or work of equal value.

It is clear that a key issue when it comes to meeting this obligation is that of classifications. Several, but not all, countries refer specifically to the issue, although in unfortunately obscure terms. What are the criteria for the classifications and for which occupations are non-neutral classifications accepted? We are left in the dark.

- **Classification systems:** Nothing is said about non-neutral classifications. The country 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. Ireland says nothing about the component elements or characteristics of this instrument, or about the pay gap calculation method for firms, thereby making it impossible to assess the latter’s relevance in terms of exonerating itself for SMEs escaping the legislation that applies to larger companies. There would therefore appear to be a violation of the Charter in their case.

Gender bias is omnipresent. For instance, the workers of a municipal parks department, who are all male, are paid a bonus, but not the employees of a municipal welfare centre’s kindergartens and nurseries, who are all female; the same could apply in a big private

company. An employer of good will who was aware of classifications and their harmful effects would have been able to ensure balance in the physical or mental strain experienced by his or her employees. Nobody would have had a bonus or everybody would have had one.

There would appear to be a lack of occupational categories with clearly defined classification criteria, and the pitfalls here have not yet been properly addressed. This issue should not just be dealt with through collective bargaining if major progress is to be made. It is clearly a responsibility of governments.

Two other key issues regarding equal pay are the overall pay gap and the context in which the gap is assessed.

- **The pay gap:** the respondent state advances an argument which is in part intrinsically contradictory and in part incompatible with the arguments put forward by the other countries.

Some of the statistics available, in particular the Eurostat indicator, group together – under conditions which must be clear, failing which confusion is generated – three separate phenomena: pay gaps proper; the number of hours worked during a period of employment and hence part-time work; and the consequences of stopping work for various reasons, including bringing up children, with the periods out of employment varying depending on the duration of and level of compensation for parental, maternity and paternity leave.

According to a document produced by the Irish government, the gender pay gap of 13.9% was below the EU-28 average (<http://www.genderequality.ie/en/GE/GPG%20Public%20Consultation%20Paper.pdf/Files/GPG%20Public%20Consultation%20Paper.pdf>).

However, in 2009 and 2008 it was 12.9%, i.e. one percentage point lower. It rose to 14.1% in 2014.

In February 2017, the Eurostat figures for the EU-28 for contributions to the gender overall earnings gap were as follows (Eurostat, Gender Statistics, Statistics explained [http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_statistics\\_Table2.PNG](http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_statistics_Table2.PNG)):

- The gender pay gap: 37.4%
- The gender hours gap: 30.5 %
- The gender employment rate gap: 32.1%

In February 2017, in the case of Ireland:

- The gender pay gap: 32.6%
- The gender hours gap: 31.4%
- The gender employment rate gap: 36.0%

Other reports reach similar conclusions, for instance: European Network of Legal Experts in Gender Equality and Non-Discrimination on “The enforcement of the principle of equal pay for equal work or work of equal value”

(ec.europa.eu/newsroom/just/document.cfm?doc\_id=48052) and the 2017 annual report on gender equality in the EU-28 (ec.europa.eu/newsroom/document.cfm?doc\_id=43416).

The ETUC's observations also state the following: "According to the Commission, based on Eurostat 2014 figures, in Ireland, the gender pay gap stands at 13.9% (the average gender pay gap in the EU is 16.7%) and the gender overall earnings gap in Ireland stands at 37.5 % (the average gender overall earnings gap in the EU is 39.8%)" (ETUC, § 96).

To assess the reality of this pay gap, it must therefore 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. It surely does not have to be repeated that in almost half the cases workers do not choose voluntarily to work part-time; it is forced on them.

- **The impact of parental leave:** The Irish government also seems not to analyse the impact on the pay gap of its choices in terms of the duration of and levels of compensation for parental leave; it has not taken action to encourage fathers actually to take longer parental leave. However, studies show that extending paternal leave is a key alternative to the traditional methods of combating wage discrimination (OECD, Policy Brief, March 2016; <https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf>).

Recent studies, including by the OECD, show that there is a link between the length of paid maternity leave and parental leave and the size of the pay gap (<https://www.nytimes.com/2017/05/13/upshot/the-gender-pay-gap-is-largely-because-of-motherhood.html>).

A look at the following is sufficient here:

- A chart showing the link between the length of paid parental leave and the pay gap (<https://utopiayouarestandinginit.com/2014/11/09/the-link-between-paid-parental-leave-generosity-and-a-larger-gender-pay-gap/>)
- An article by O Thévenon and A Solaz, "Labour Market Effects of Parental Leave Policies in OECD Countries", published in OECD Social, Employment and Migration Working Papers No. 181, 2013; <http://www.oecd-ilibrary.org/docserver/download/5k8xb6hw1wjf-en.pdf?expires=1512122805&id=id&accname=guest&checksum=0607E498F60AD5CC8648E59B0C051980> ; <http://paa2012.princeton.edu/papers/121481>
- 2016 RAND study on the impact of paid parental leave, including paternal leave, on wage equality ([https://www.rand.org/pubs/research\\_reports/RR1666.html](https://www.rand.org/pubs/research_reports/RR1666.html))
- The 2016 OECD statistics on the total length of paid maternity leave and parental leave (in weeks), which confirms this analysis (<http://stats.oecd.org/index.aspx?queryid=54760&lang=en>).

- **Measurement of the pay gap** is also based solely on monthly wages and does not take account of fringe benefits. However, the pay gap in fringe benefits is wider than in the case of wages themselves. The bonus gap is reported to be as high as 50%. ([https://www.morganmckinley.ie/sites/morganmckinley.ie/files/gender\\_pay\\_gap\\_in\\_ireland\\_2016.pdf](https://www.morganmckinley.ie/sites/morganmckinley.ie/files/gender_pay_gap_in_ireland_2016.pdf), p. 3).

Once again the official data are not reliable. The statistics lack credibility because the variable share of remuneration, where men are massively favoured, is excluded.

Average earnings in Ireland are put at €61 500 for men and €49 500 for women, the difference of 20% being far from the Eurostat figures. Women are therefore over-represented in the lowest full-time gross monthly wage categories, while the proportion of men is higher in the highest categories.

In 2014, according to the Central Statistics Office, 50% of women workers earned €20 000 or less: “the majority of workers dependent on minimum wage are women. Low paid employment is linked to poor working conditions with the use of low and non-fixed-hour contracts in the retail, hospitality and care sectors increasing. These sectors are significant employers of women. The increased casualisation of working conditions is a clear consequence of austerity policies which favoured employers’ concerns rather than employees’ rights. The rate of part-time employment is also highly gendered; among women it has traditionally accounted for over a third of the female workforce, and stood at 35% in 2014, compared to 13.8% of men’s in the same year. The Low Pay Commission should be strengthened to reflect in-work poverty, the gender pay gap and minimum essential standards of living” (Shadow report, *ibid.*, p. 16).

Women are over-represented in the lowest full-time gross monthly wage categories, while the proportion of men is higher in the highest categories.

The indicator makes no distinction between the public and private sectors. It should nevertheless be noted that the pay gap in the private sector is wider than in the public sector.

- **The assessment base:** It is clear that the assessment base must 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. The respondent state 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.

It is worthwhile referring to the Committee’s conclusions setting out the principles which apply to all the respondent states (Conclusions 2016, Portugal):

“The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).” Articles 20 and 4§3 of the Charter require that it be possible to make pay comparisons across

companies (Conclusions 2010, France). At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Statement of Interpretation on Article 20, Conclusions 2012)”.

Other key variables were not taken into account in the respondent state’s submissions, although they have been covered in the work done by the ILO for forty years.

In assessing a particular job, it is necessary to employ assessment grids, pay attention to neutral classifications and focus on:

- The problems relating to the choice of assessment criteria and their significance
- The problems relating to the omission of certain criteria
- The problems relating to certain aspects being overemphasised
- The problems relating to the interplay of the levels and weighting of the criteria
- The problems relating to the lack of transparency in the assessment process
- The problems relating to career advancement in different employment sectors

Examples of indirect discrimination bias have been identified in job assessment and classification methods, but nothing has been done to take account of them effectively in policies:

- The choice of the criteria employed to assess jobs
- The application of these criteria in the weighting and ranking of jobs.

For instance, the responsibility recognised in a particular job is often financial or relates to line management. However, other types of responsibility exist and are not taken into account, including responsibility in relation to persons who are not subordinates, to products or to data confidentiality. Other examples are problem resolution, which is neither visible nor of strategic importance, and daily issues to be resolved, with none of these being covered in classifications. While reference has already been made to physical or mental strain, there is also the issue of the multiskilling required in posts held by women not being taken on board positively, unlike the specialisation of their male colleagues’ posts.

It is clear what has to be done, so why is no corresponding action being taken? The grids included in the various plans on the initiative of the authorities are not binding.

Gender mainstreaming in all cross-cutting activities is required under the European Social Fund programme for 2015-2020 and the Council of Europe Gender Equality Strategy for 2014-2017, in which the respondent state was involved. On the basis of the information supplied by states, a report was issued on 19 October 2017: “Activities and measures in member states towards the achievement of the objectives of the Council of Europe Gender Equality Strategy” (<https://rm.coe.int/gec-2017-10-implementation-ge-strategy/168075df26>).

- **Economic losses of several billion euros:** There is no justification in law for this inequality, and no economic justification either.

For some fifteen years now, studies have agreed that the various types of discrimination on the labour market are ruinous and cause huge economic losses. Reducing them would generate an increase in growth and income of roughly 3% to 4% of GDP. Putting men and women on a strictly equal footing would accordingly inject billions of euros into the economy and generate billions of euros in additional tax receipts for governments because of the collection of higher levels of employee and employer contributions and taxes. And women workers would also benefit directly in terms of their living standards.

Unfortunately, the pay gap at present is such that in 2017 female employees in Europe worked for free from 3 November to 31 December.

Female workers in Ireland worked for free from 10 November 2017 to 31 December 2017 (<http://www.slate.fr/story/127622/infographie-ecart-salaires-europe>). The country is ranked 21st in terms of the widest pay gaps in Europe. Irish women who experience this inequality on a daily basis cannot but be disillusioned on hearing the country's declarations of intent concerning social progress.

Since 1 January 2018, one Council of Europe member state, Iceland, has prohibited unequal pay for women and men and imposed harsh financial penalties for non-compliance. This is an example to be followed in that it both respects women's rights and benefits everybody.

In any case, EU member states are covered by EU directives and hence the rule prohibiting indirect discrimination, breaches of which play a large part in wage gaps.

The European Committee of Social Rights will accordingly uphold the complaint and declare UWE's action well-founded.

#### **IV. THE UNDER-REPRESENTATION OF WOMEN IN DECISION-MAKING POSTS**

At issue here are access by women to positions of responsibility and the promotion of genuine equality in the occupation of those posts, as well as the elimination of pay gaps. Although most countries have provided much information here in terms of listing the institutions involved and the meetings held in this connection, it is not possible to determine the extent to which the relevant strategies are actually conclusive or achieve the desired objectives in reasonable proportions and within short timeframes.

##### **4.1. Women on company boards of directors**

A 2016 analysis of parity on boards by Ofi Management ("La parité au sein des conseils, un enjeu de diversité") shows that Ireland ranked 19th in the EU in this respect (<http://www.morningstar.fr/fr/pro/api.aspx?path=cache/documentdownloads/files/8379/revisions/1/>; p. 3). Women accounted for 13.2% of board members (ibid., p. 6).

The self-regulation in place since 2011 is clearly inadequate to ensure access by the under-represented gender, i.e. women, to decision-making posts in private companies.

The respondent state does not give the reasons why the target for the under-represented gender is not parity. Parity is the only quota acceptable; from this point of view, the law does not meet the requirements of the Social Charter.

The actual situation in practice is that women are under-represented on private company boards. It is to be hoped that the system will not be confined solely to very large companies, thereby excluding them de facto from these posts.

The state 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 boards. Has the penalty involving the suspension of financial benefits for board members been applied? No information is provided on this issue.

Clearly, progress is slow and is confined very narrowly to the largest companies in the country and to boards of directors, which again shows the responsibility of the respondent state, as also stressed by the ETUC in its observations:

“Concerning the (under-)representation in decision-making positions within private companies this problem has only been addressed in more recent years. As developed in Part I.B.2., this is covered by Article 20 of the Charter. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 20 of the Charter. *a) Substance* Statistical evidence (see above para. 98) shows that there is still an under-representation of women in decision-making bodies within private companies (and that even the 40% quota fixed by the national legislation is not reached). 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. *b) 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” (ETUC, § 107 to 111).

#### **4.2. The legislation does not apply to management boards**

The percentage of women in this case is even lower than on boards of directors.

“A double glass ceiling and a perimeter wall” and “a sticky floor” are the graphic terms used to describe the difficulties women in the country encounter in being appointed to positions of responsibility in companies.

The collective complaint must be upheld on both claims.

### **V. THE COSTS INCURRED**

With regard to the claims for a state whose policy is found to be in breach of the Social Charter to meet the costs incurred in bringing the collective complaints, the objection by all the respondent states, including Ireland, is based on the idea that the European Committee of

Social Rights is not a judicial authority and that there is no explicit provision in the Charter for the costs to be met. Although there is indeed no such provision, the payment of the winning party's legal costs, as is the rule in cases before domestic courts, would be consistent with the spirit of the Charter.

Otherwise, there will be a real indirect dissuasive effect on organisations which theoretically are entitled to lodge collective complaints – as demonstrated by the fact that so few have succeeded in doing so, regardless of how much they wanted to – to put an end to numerous well-known violations of the Charter which may or may not be noted during the supervision cycles.

In addition, the collective complaints before the European Committee of Social Rights are similar in many respects to the appeals against regulatory decisions on grounds of abuse of authority which are heard in some states by administrative courts or bodies with related powers and where the public authorities are not awarded costs if the applications by natural or legal persons are dismissed. The only exception involves fines for abuses of the right of application. The claim for costs is therefore maintained.

## **VI. STATEMENT BY THE COMMISSIONER FOR HUMAN RIGHTS**

It should be noted that all the texts of the various pillars of the Council of Europe enshrine effective gender equality, member states have adapted their legislation and the actions, strategies, recommendations and resolutions of the Council of Europe pursue this goal.

The respondent state's replies concerning the two complaints are not sufficiently precise. However, as it has signed up to the Charter, it falls to the respondent state to indicate what measures are taken in the country and the reasons for the persistent inequalities, the under-representation of women in decision-making posts, the random statistics, the plans which do not produce results and the lack of reports and assessments.

There is a lack of political will and practical action on the part of the respondent states of the kind women have been waiting for for so many years.

It is worth referring here to the statement by Nils Muiznieck, Council of Europe Commissioner for Human Rights, dated 20 December 2017 and entitled "Gender equality in employment is still a distant promise in Europe", which reads as follows:

"This year once again 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”.

“The role of state authorities, in particular governments and parliaments, is crucial. They must lead by example and fully implement the gender equality standards set out in international and European human rights treaties. Among them, **the European Social Charter requires that state parties guarantee the principle of equal pay for work of equal value by legislation that should be implemented effectively.** This includes providing for appropriate sanctions and remedies in case of gender discrimination in the workplace. Both within the public administration and in the labour market, state authorities must make more efforts to bridge the gender pay gap. They should also remove barriers that prevent women from reaching top level posts”.

**“The current situation is not only harmful for women and the economy. It is deleterious for society as a whole.** Even where the gender pay gap is narrowing, this is happening very slowly. If states do not step up their efforts now, it will take several more decades before full equality is achieved. We cannot afford to wait such a long time. **European states must show more resolve in upholding the obligation to ensure gender equality in the employment sphere”.**

<https://www.coe.int/en/web/commissioner/-/gender-equality-in-employment-is-still-a-distant-promise-in-europe>).

#### **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 declare the action by University Women of Europe, UWE / Groupe Européen des Femmes diplômées des Universités, GEFDU, well-founded;
- consequently, to hold that Ireland’s failure to ensure in practice equal pay for women and men for equal, similar or comparable work and the under-representation of women in decision-making posts in Ireland breach the provisions of the revised European Social Charter, particularly Articles 1, 4, 4§3, 20 and E;
- to draw any factual and legal conclusions therefrom,
- consequently, to order Ireland to pay University Women of Europe, UWE / Groupe Européen des Femmes Diplômées des Universités, GEFDU, and its counsel the sum of €10 000 excluding tax by way of an initial estimate to cover the time spent and the costs incurred in connection with these proceedings.

