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

DECISION ON THE MERITS

Adoption: 6 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Italy

Complaint No. 133/2016

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 PIUI

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 22 May 2019, 12 September 2019, 16 and 17 October 2019, 2, 3 and 6 December 2019,

On the basis of the report presented by Petros STANGOS,

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 Italy 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 Italy.
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 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. On 9 October 2017, the Government asked for an extension to the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 3 November 2017. The Government's submissions on the merits were registered on 2 November 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 5 January 2018. UWE's response was registered on 5 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 9 March 2018. The Government's further response was registered on 5 March 2018.

11. Pursuant to Rule 32A of the Rules, the President invited the European Network of Equality Bodies (EQUINET) to submit observations by 5 March 2018. EQUINET indicated that it was not able to submit information concerning Italy.

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 Italy constitutes a violation of Articles 1, 4§3, and 20 as well as Article E of the Charter on the following grounds:

- Firstly, UWE alleges that a pay gap between women and men still persists and is unfavourable to women;
- Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, despite the legislation enacted.

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

B – The respondent Government

15. The Government asks the Committee to reject UWE's allegations as unfounded, and dismiss the complaint in its entirety, as the legislation and amendments introduced provide the necessary institutional framework for ensuring respect of the principle of non-discrimination in Italy. Accordingly, the Government invites the Committee to hold that Italy does not violate Articles 1, 4§3 or 20, or Article E in conjunction with Articles 1, 4§3 and 20 of the Charter.

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 minimum 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 considers 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 enforce it sufficiently. 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.

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. The same procedural elements as those listed for equal pay between men and women are applicable.

24. As regards Italy, the ETUC maintains that the gender pay gap has both, substantial and procedural dimension. From a substantive perspective, there are at least the following elements which, according to the ETUC, should (at least in combination) lead to a violation of Article 20 of the Charter:

- statistical evidence 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.

25. 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.

26. From a procedural perspective, it appears evident that there is also a violation as the result of the fact that 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.

27. 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.

28. Concerning the under-representation of women in decision-making positions within private companies, according to ETUC the main regulatory instruments in relation to representation of women in decision-making positions in private and public enterprises/administrations - and without being exhaustive - are the following:

- Law No. 103/2011 of June 2011, which provides for minimum quotas for the less represented sex in boards of directors and boards of statutory auditors of publicly listed companies and state-owned companies. This law has a temporary validity, since it foresees mandatory quota only for the three mandated board terms to follow. 2022 is thus a cut-off date.
- Law No. 120 of 12 July 2011 aimed at increasing the participation of women on boards of publicly traded companies or those with a public participation;
- Decree of the President of the Republic of 30 November 2012 which extended the application of Law No. 103/2011 to state owned enterprises.

29. As regards substantive dimension, 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.

30. As regards procedural perspective, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

31. 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

32. In its observations regarding Complaints No 124-138/2016, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 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.

33. 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).

34. 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.

35. 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

36. Moreover, several other Commissions' actions directly relate to some of the elements of the complaints, such as to 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, 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.

37. 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.

38. 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)

39. EQUINET did not submit any observations in respect of Italy.

RELEVANT DOMESTIC LAW

40. The parties refer to the following provisions of domestic law:

A – The Constitution

41. The Italian Constitution establishes the principle of equality between women and men:

Article 3

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

Article 37

Working women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfill their essential role in the family and ensure appropriate protection for the mother and child.

B – Legislative Decree No. 198/2006

42. Legislative Decree No. 198/2006, a consolidating act called the Code of Equal Opportunities between Men and Women, contains all anti-discriminatory provisions relating to gender which were issued to implement EU directives or which were already in conformity therewith. It combines all the provisions on gender discrimination and equal opportunities in all civil, political, social and economic fields, including employment relationships. The Code has been amended on several occasions and

also by Legislative Decree No. 5 of 25 January 2010 which transposed Recast Directive 2006/54/EC.

Article 12 Appointment

(Article 1, paragraph 1, and Article 2, paragraphs 1, 3, 4, of Legislative Decree No. 196 of 23 May 2000)

“1. An equality advisor shall be appointed at national level, at regional level and at the level of the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014. For each advisor, a substitute shall also be appointed [...].

2. The national equality advisor and his or her substitute are appointed by Decree of the Minister of Labor and Social Policies, in consultation with the Minister for Equal Opportunities.

[...]

4. In the event that the equality advisors for the regions and for the metropolitan cities and the supra-municipal entities as defined in Law No. 56 of 7 April 2014 should not be appointed within sixty days following the expiration of the mandate, or should be appointed without the requirements of Article 13, paragraph 1, being met, the Minister of Labor and Social Policies, within thirty days thereafter, shall initiate a procedure of comparative assessment regarding the requirements set out in Article 13, paragraph 1, whose total duration shall not exceed 90 days from the deadline for submitting applications.”

Article 13 Requirements and attributions

(Article 1, paragraph 2, and Article 2 paragraph 2, of Legislative Decree No. 196 of 23 May 2000)

“1. The equality advisors must possess specific competencies and several years of experience in the fields of women's work, of laws and regulations on equality and equal opportunities as well as of the labor market, suitably documented.

2. The equality advisors, and their substitutes, promote and control the implementation of the principles of equality of opportunity and non-discrimination between women and men at work. In carrying out their duties, the equality advisors are public officials and must report to the judicial authority the offenses which come to their knowledge by reason of their position.”

Article 14 Mandate

“1. The term of office of the equality advisors referred to in Article 12, and of their substitutes, shall be four years, renewable once only. [...] The renewal procedure is carried out according to the modalities set out in Article 12. The equality advisors shall remain in office until the procedure set out in Article 12 is completed [...]”.

Article 15. Tasks and functions

“1. The equality advisors undertake any useful initiative, within the competence of the state, to ensure the compliance with the principle of non-discrimination and the promotion of equal opportunities between male and female workers, in particular in performing the following tasks:

a) detection of situations of gender imbalance [...] to promote and ensure non-discrimination in access to employment, in promotion and vocational training including professional and career advancement, in working conditions including remuneration or in relation to supplementary collective pension schemes pursuant to Legislative Decree No. 252 of 5 December 2005;

- b) promotion of projects of positive actions, also through the identification of community [EU], national and local resources aimed at this purpose;
- c) promoting the coherence in the planning of territorial development policies with respect to community [EU], national and regional guidelines on equal opportunities;
- d) promotion of equal opportunities policies in the field of active labor policies including the training policies;
- e) collaboration with interregional and territorial labor departments to detect violations of the laws and regulations on equality, equal opportunities and guarantees against discrimination, including through the design of special training packages;
- f) dissemination of knowledge and exchange of good practices and information and cultural education activities on the problems of equal opportunities and on the various forms of discrimination;
- g) liaison and collaboration with the competent departments and equality bodies of the local authorities.

2. The national equality advisor, within his or her competence, identifies the intervention priorities and action programmes in compliance with the annual planning of the Minister of Labor and Social Policies. He or she carries out the tasks referred to in paragraph 1 [...] and can conduct independent investigations concerning discrimination at work and publish independent reports and recommendations on discrimination at work.

3. The national and regional equality advisors participate in the local partnership tables and the monitoring committees referred to in Regulation (EC) No. 1303/2013 of the European Parliament and the Council of 17 December 2013. The equality advisors for the regions and for the metropolitan cities and the supra-municipal entities are also members of the parity commissions of the corresponding territorial level, or of differently named bodies that perform a similar function. The national equality advisor, or his or her substitute, is a member of the National Committee referred to in Article 8.

4. The regions provide the equality advisors with the necessary technical support to: detect situations of gender imbalance; process the data contained in the reports on the situation of staff referred to in Article 46; promote and provide professional training and retraining plans; promote projects of positive actions.

5. At the request of the equality advisors, the interregional and territorial labor departments competent *ratione loci* obtain information, at the work sites, on the employment situation for men and women in relation to recruitment, training and professional promotion, remuneration, working conditions, termination of employment, and any other useful element, also on the basis of specific detection criteria indicated in the request.

6. By December 31 of each year the equality advisors for the regions, and for the cities and the supra-municipal entities as defined in Law No. 56 of 7 April 2014, submit to the bodies that have designated and appointed them an activity report drafted on the basis of indications provided by the Ministry of Labor and Social Policies.. The equality advisor who has not submitted the report or has submitted it with a delay of more than three months is removed from office by a decision taken by the Minister of Labor and Social Policies, upon report of the body that has designated him or her.

7. [Annual report submitted by the national equality advisor to the Minister of Labor and Social Policies]"

Article 25 Direct and indirect discrimination
(Article 4, paragraphs 1 and 2, of Law No. 125 of 10 April 1991)

“1. Constitutes a direct discrimination, within the meaning of this Title, ((any provision, criterion, practice, act, agreement or conduct)), as well as the fact to order an act or a conduct, which produces an injurious effect on workers by discriminating them by reason of their sex or, in any case, a treatment less favorable than that of another male or female worker in a similar situation.

2. There is indirect discrimination, within the meaning of this Title, when a seemingly neutral provision, criterion, practice, act, agreement or conduct puts or can put workers of a given sex at a substantial disadvantage in comparison with workers of the other sex, unless it meets an essential professional requirement, and provided that the objective is legitimate and the means employed for its achievement are appropriate and necessary.

2bis. Constitutes a discrimination, within the meaning of this Title, any less favorable treatment by reason of pregnancy, as well as of maternity or paternity including in case of adoption, or by reason of ownership and exercise of the relative rights.”

Article 28. Prohibition of pay discrimination (Law 9 December 1977, No. 903, Article 2)

“1. Any discrimination, direct or indirect, concerning any aspect or condition of remuneration, with regard to the same work or a job to which equal value is attributed, is prohibited.)

2. Occupational classification systems for the purpose of determining wages must adopt common criteria for men and women (and be developed in such a way as to eliminate discrimination”.

Article 36. Procedural legitimacy (Article 4, paragraphs 4 and 5, of Law No. 125 of 10 April 1991)

“1. Anyone intending to take legal action about discrimination in breach of the prohibitions laid down in Chapter II of this Title, or any discrimination in access to employment, in promotion and vocational training, in working conditions including remuneration or in relation to supplementary collective pension schemes pursuant to Legislative Decree No. 252 of 5 December 2005, and does not consider availing him- or herself of the conciliation procedures provided for by collective agreements, can promote the attempt at conciliation pursuant to Article 410 of the Code of Civil Procedure or, respectively, of Article 66 of Legislative Decree No. 165 of 30 March 2001, including through the equality advisor competent *ratione loci* ((for the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014)) or for the region.

2. Without prejudice to the actions in court referred to in Article 37, paragraphs 2 and 4, the equality advisors competent *ratione loci* ((for the metropolitan cities and the supra-municipal entities as defined in Law No. 56 of 7 April 2014)) and for the regions may lodge an application before the court sitting as an employment tribunal or, for matters under its jurisdiction, before the regional administrative court competent *ratione loci*, on behalf of the interested party, or intervene in the judicial proceedings initiated by the latter.”

Article 38. Measure to combat discrimination (Article 15 of Law no. 903 of 9 December 1977;
Article 4(14) of Law no. 125 of 10 April 1991)

“1. In the event that any discrimination should occur in breach of the prohibitions laid down in Chapter II of this Title or in Article 11 of Legislative Decree No. 66 of 8 April 2003, or otherwise

any discrimination in access to employment, promotion and vocational training, working conditions including remuneration or in relation to supplementary collective pension schemes pursuant to Legislative Decree No. 252 of 5 December 2005, upon application by the worker, or on his behalf by a trade union organisation or an association or organisation the aim of which is to defend the right or interest infringed, or by the equality advisor competent *ratione loci* for ((the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014)) or the region, the court at the place where the contested conduct occurred shall, sitting as an employment tribunal, within two days of that application, issue an immediately enforceable decree supported by reasons ordering the person responsible for the contested conduct to desist from the unlawful conduct and to rectify its effects, after summoning the parties and hearing summary information, if it considers that the alleged violation is substantiated, and shall also upon request order damages, including for non-pecuniary loss, on the basis of the proof furnished.

2. The enforceability of the decree may not be revoked until the judgment by which the court terminates any proceedings launched in accordance with the following paragraph.

3. Within fifteen days of notification to the parties, an application to set aside the decree may be filed with the court, which shall rule by an immediately enforceable judgment. The provisions of Articles 413 et seq. of the Code of Civil Procedure shall be complied with.

4. Failure to comply with the decree referred to in paragraph 1 or the judgment issued in appeal proceedings shall be punished by a fine of up to €50,000 or a term of imprisonment of up to six months.

5. Protection before the administrative courts shall be governed by Article 119 of the Code of Administrative Procedure.

6. Without prejudice to the ordinary action, the provisions of paragraphs 1 to 5 shall apply in all cases in which an individual judicial action is launched by the interested party or on his or her behalf by a trade union organisation or an association or organisation the aim of which is to defend the right or interest infringed, or by the equality advisor for ((the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014)) or the region.

Article 40. Burden of proof (Article 4(6) of Law no. 125 of 10 April 1991)

“1. If the applicant furnishes factual evidence, including factual evidence which may be inferred from statistical data relating to appointments, remuneration arrangements, allocation to tasks and roles, transfers, career advancement and dismissals, that is capable of establishing in a precise and concordant manner a presumption as to the existence of acts, agreements or conduct that are discriminatory on the grounds of sex, it shall be for the defendant to prove that no discrimination occurred.”

Article 41. Mandatory administrative action and sanctions (Article 4(12) of Law no. 125 of 10 April 1991; Article 16(1) of Law no. 903 of 9 December 1977)

“1. Any finding concerning discrimination in breach of the prohibitions laid down in Chapter II of this Title, or concerning any discrimination in access to employment, promotion and vocational training including professional and career advancement, working conditions including remuneration or in relation to supplementary collective pension schemes pursuant to Legislative Decree No. 252 of 5 December 2005 committed by persons who have been granted benefits under the terms of applicable national legislation or who have concluded contracts in relation to the completion of public works, services or supplies shall be reported immediately by the labor directorate competent *ratione loci* for ((the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014)) to the ministries in the administrations of which the award of the benefit or of the contract was ordered. These ministries shall adopt the appropriate rulings, including if necessary the revocation of the benefit and, in the most serious cases or in the event of repeated breaches, may decide to exclude the responsible person for up to two years from the granting of any further financial benefit or loan or from the award of any contract. This provision shall also apply in relation to financial benefits, loans or contracts granted by

public bodies, to which the labor directorate for ((the metropolitan city and the supra-municipal entity as defined in Law No. 56 of 7 April 2014)) shall report directly the discrimination identified in order to enable the relevant sanctions to be adopted. This paragraph shall not apply in the event of successful conciliation pursuant to Articles 36, paragraph 1, and 37, paragraph 1.

2. Failure to comply with the provisions laid down in Articles 27, paragraphs 1, 2 and 3, 28, 29, 30, paragraphs 1, 2, 3 and 4, shall be punished by a fine of between €250 and €1,500.”

Article 42. Adoption and purpose of positive actions (Law 10 April 1991, No. 125, Article 1, paragraphs 1 and 2)

“1. Positive actions, consisting of measures intended to remove obstacles that effectively prevent the realisation of equal opportunities, within the competence of the state, are aimed at favoring female employment and realising the substantial equality between men and women at work.

2. The positive actions referred to in paragraph 1 have in particular the purpose of:

- a) eliminating disparities in education and professional training, access to employment, career advancement, working life and mobility periods;
- b) promoting the diversification of women's professional choices, in particular through educational and vocational guidance and training tools;
- c) favoring access to self-employment and entrepreneurial training and the professional qualification of self-employed women and women entrepreneurs;
- d) overcoming the conditions, organisation and distribution of work that cause different effects, depending on the sex, towards employees with prejudice to training, to professional and career advancement or in the economic and salary treatment;
- e) promoting the inclusion of women in the activities, in the professional sectors and in the levels in which they are underrepresented and in particular in the technologically advanced sectors and the levels of responsibility;
- f) favoring, also through a different organisation of work, conditions and working time, the balance between family and professional responsibilities and a better distribution of these responsibilities between the two sexes.
- f-bis) enhancing the professional content of jobs with a stronger female presence.

Article 43. Promotion of positive actions (Law 10 April 1991, No. 125, Article 1, paragraph 3)

“1. The positive actions referred to in Article 42 may be promoted by the Committee referred to in Article 8 and by the equality advisors referred to in Article 12, by centers for equality and equal opportunities at national, local and company level, irrespective of their names, ((by employment centers,)) by public and private employers, by vocational training centers, by national and territorial trade union organisations, also on the proposal of the company trade union representatives or the staff representative bodies referred to in Article 42 of Legislative Decree No. 165 of 30 March 2001.”

Article 46. Report on the situation of personnel (Law 10 April 1991, No. 125, Article 9, paragraphs 1, 2, 3 and 4)

“1. Public and private companies employing more than one hundred employees are required to prepare a report at least every two years on the situation of male and female personnel in each of the professions and in relation to the state of assumptions, training, professional promotion, levels, category or qualification steps, other mobility phenomena, intervention of the Wage Supplement Fund, the redundancies, early retirement and retirement payments, the remuneration actually paid.

2. The report referred to in paragraph 1 shall be forwarded to the trade union representatives and to the councilor and the regional parity councilor, who shall draw up the relevant results by transmitting them to the national councilor or advisor, the Ministry of Labor and of the social policies and the Department of equal opportunities of the Presidency of the Council of Ministers.

3. The report is prepared in accordance with the indications defined in the ambit of the specifications referred to in paragraph 1 by the Ministry of Labor and Social Policies, with its own decree.

4. If, within the prescribed deadlines, the companies referred to in paragraph 1 do not transmit the report, the Regional Labor Directorate, upon notification of the subjects referred to in paragraph 2, invites the companies themselves to provide them within sixty days. In the event of non-compliance the sanctions referred to in Article 11 of the Presidential Decree of 19 March 1955, n. 520. In the most serious cases the suspension for one year of the social benefits that may be enjoyed by the company may be ordered.

Article 48 Positive actions in public administrations
(Legislative Decree of 23 May 2000, No. 196, Article 7, paragraph 5)

“1. Pursuant to Articles 1, paragraph 1, letter c), 7, paragraph 1, and 57, paragraph 1, of Legislative Decree No. 165 of 30 March 2001, the administrations of the state and, within their statutory autonomy, the provinces municipalities and other public non-profit entities, having heard the representative bodies referred to in Article 42 of Legislative Decree No. 165 of 30 March 2001, or, failing that, the representative organisations within the sector and the area of interest, having also heard, in relation to the operational sphere of the activity concerned, the Committee referred to in Article 10, and the national equality advisor, or the Committee for equal opportunities possibly provided for by the collective agreement and the equality advisor competent *ratione loci*, draw up plans for positive actions aimed at ensuring, in their respective sphere, the removal of obstacles that prevent *de facto* to fully achieve equal opportunities both to employment and at work between men and women. These plans shall, *inter alia*, in order to promote the inclusion of women in the sectors and the professional levels in which they are underrepresented, in the sense of article 42, paragraph 2, letter d), favor the rebalancing of the female presence in the activities and the hierarchical positions where there is a gender gap of not less than two thirds.

For this purpose, on the occasion of both recruitments and promotions, in the presence of male and female candidates with similar qualifications and professional skills, the possible choice of a male candidate must be explicitly and adequately motivated. The plans referred to in this Article have a three-year duration. In case of non-compliance, Article 6, paragraph 6, of Legislative Decree No. 165 of 30 March 2001 shall apply.”

C – Legislative Decree No. 150/2011

Article 28 Disputes concerning discrimination

“1. Disputes relating to discrimination falling under Article 44 of Legislative Decree no. 286 of 25 July 1998, those falling under Article 4 of Legislative Decree no. 215 of 9 July 2003, those falling under Article 4 of Legislative Decree no. 216 of 9 July 2003, those falling under Article 3 of Law no. 67 of 1 March 2006, and those falling under Article 55-quinquies of Legislative Decree no. 198 of 11 April 2006 shall be governed by the accelerated procedure, unless provided otherwise by this Article.

2. The court at the place where the claimant is ordinarily resident shall have jurisdiction.

3. The parties may participate in the hearings in a personal capacity during proceedings at first instance.

4. If the claimant furnishes any factual evidence, which may also be inferred from statistical data, on which a presumption of discriminatory acts, agreements or conduct can be based, it shall be for the defendant to prove that no discrimination occurred. Statistical data may relate also to appointments, remuneration arrangements, allocation to tasks and roles, transfers, career advancement and dismissals in the business concerned.

5. In the ruling concluding the proceedings the court may also order the defendant to pay damages for non-pecuniary loss and order the cessation of the discriminatory behaviour, conduct or act with detrimental effects and may issue any other order capable of remedying its effects, *inter alia* against the public administration. In order to prevent the recurrence of discrimination, the court may order the adoption of a plan to rectify the discrimination ascertained within the time limit stipulated in the order. In situations involving collective discriminatory conduct, the plan shall be adopted after consulting the claimant collective body.

6. When awarding damages, the court shall take account of whether the discriminatory act or conduct constituted retaliation for any previous legal action or an unfair response to any previous initiative pursued by the injured party with a view to securing compliance with the principle of equal treatment.

7. If it accepts the claim, the court may order the publication of its order in a nationally distributed daily newspaper on one single occasion at the cost of the defendant. Notice of the order shall be given under the circumstances provided for by Article 44(11) of Legislative Decree no. 286 of 25 July 1998, Article 4(1) of Legislative Decree no. 215 of 9 July 2003, Article 4(2) of Legislative Decree no. 216 of 9 July 2003 and Article 55-quinquies(8) of Legislative Decree no. 198 of 11 April 2006.”

D – Law No. 120 of 12 July 2011

43. A quota system has been introduced by Law No. 120 of 12 July 2011 for the appointment of managing directors and auditors of listed companies and state subsidiary companies, where each sex cannot be represented in a proportion lower than one third.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

44. The Committee of Ministers adopted several recommendations, such as Recommendation Rec(1985)2 on legal protection against sex discrimination, in which it 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.

45. 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)

46. 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.

47. 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.

48. 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.

49. 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)

50. 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.”

51. 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

52. 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.”

53. 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.

54. 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

55. 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

56. 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

57. 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”

3. Principes relatifs au statut des institutions nationales (Principes de Paris)

58. 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:

59. 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

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

61. 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.”

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

Article 830

“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. [...]

63. 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

64. 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."

65. 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).

66. 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.

67. 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

68. 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.

69. 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.”

70. 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

71. See the 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.”

b) Court of Justice of the European Union

72. 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.

73. 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).

74. 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).

75. 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).

76. 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).

77. 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).

78. 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).

79. 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).

80. 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).

81. 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).

82. 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).

83. 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

84. 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.

85. 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)).

86. 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.

87. 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).

88. 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.

89. 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.

90. 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).

91. 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).

92. 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.

93. 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

94. 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

95. 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

96. UWE considers that in the present case the information provided by the Government 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.

97. According to UWE, the fact that a set of legal documents (constitution, laws, etc.) prohibit 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. According to UWE, Law No. 101/ 2008 provides for an explicit shift of the burden of proof from the complainant to the respondent (in civil and administrative law), in cases of "prima facie discrimination". To benefit from this shift, complainants must provide factual evidence that clearly and consistently supports the presumption of the existence of discriminatory acts, agreements or conduct.

99. However, UWE states that the right of equal pay also entails that there must exist accessible and reliable judicial remedies, which are not too costly and complex. Complainants must also be protected against any kind of retaliation. UWE considers that in the submissions of the respondent State, there is no information as regards effective judicial regulation, particularly its procedures, cost, independence and reliability. The respondent State provides no reliable statistics concerning the number of cases dealt with by the courts, infringements noted, penalties imposed or reparations issued by administrative or judicial bodies such as labour, civil and criminal courts.

Pay transparency and job comparisons

100. UWE refers to Article 46 of the Code for Equal Opportunities, as amended by Legislative Decree 5/2010, according to which public and private companies with more than 100 employees are required to submit every two years a report on the respective situation of women and men in their various professional categories, in terms of hiring, training and promotion. According to UWE, remuneration is governed not by law, but by collective bargaining, which fixes minimum wages by economic sector and by qualification. Therefore, in general, in all firms in the same economic sector, the National Collective Agreement (CCNL) is applied, which, for equal work, offers its own employees equal salary. Instead of the CCNL, the employer may apply the Second-Level Enterprise Contract, on the basis of which workers may receive a higher wage in the event of an increase in productivity.

101. UWE, however, raises doubts about the effectiveness of all these instruments and asks why no convincing results have been achieved despite the fact that the right to bargain collectively and the obligation to collect data both exist.

102. UWE believes that the key question is that of job classifications. The Government only refers to them in obscure terms and does not indicate the criteria used in classifications and the professions for which non-neutral classifications can be accepted.

103. UWE maintains that as regards job classifications, it is necessary to note the importance of the number of non-neutral classifications. However, the Government does not provide any information about the characteristics of job classifications or measures taken to encourage the negotiation of classifications, in the absence of a requirement to establish them.

Equality bodies and other institutions

104. As regards the Equality Advisors, according to UWE, these are not independent bodies since this institution was established as a section of the Department of Equal Opportunities of the Presidency of the Council of Ministers, which previously dealt exclusively with gender discrimination. Among the tasks of Equality Advisors, non-discrimination seems to occupy only a marginal place. UWE states that the Government does not provide any information concerning concrete activities carried out by the Equality Advisors. According to UWE, the problem of discrimination remains far from a priority, both in political and social programmes. The marginalisation of the

activities of the Office for the Promotion of Equal Treatment and the Prevention of Discrimination based on Race and Ethnicity (UNAR), the body of the Government that is supposed to work for the promotion of equality, is both a cause and a consequence of this lack of awareness, at least among politicians.

105. UWE also considers that the Government provides no information as regards checks carried out by the Labour Inspectorate, and the powers of labour inspectors have not been strengthened to enable them to detect discrimination within companies.

2. The respondent Government

Recognition of the right to equal pay in legislation

106. The Government underlines that, as indicated by the National Institute of Statistics in its report on Pay Gaps in the Private Sector in 2014, published in December 2016, the pay gap between men and women in Italy is among the lowest in Europe (5.5% in 2015).

107. According to the Government, national law establishes provisions on equal opportunities and prohibition of discrimination between men and women in the workplace in the Code of Equal Opportunities for Men and Women, which is the subject of Legislative Decree No.198/2006. The principle of equal pay - which the Constitution affirms in Articles 3 and 37 - is reaffirmed in Article 28 of Legislative Decree No.198/2006, which prohibits any discriminatory conduct of an employer in ensuring equal pay for the same work or work of equal value, and prohibits the practice of applying different criteria on the basis of the employee's gender in the development of occupational classification systems adopted for the purpose of determination of compensation levels.

Effective remedies

108. According to the Government, the sanctions regime applicable to the violation of Article 28 of Legislative Decree No. 198/2006 (prohibition of pay discrimination) was recently subject to a significant amendment, following the entry into force (on February 6, 2016) of Legislative Decree No. 8/2017 (on "Provisions on decriminalisation, in the sense of Article 2, paragraph 2, of the Law No. 67/2014). It establishes the decriminalisation of many illegal actions in the field of labour and social legislation punishable by sanctions, among which, discrimination between men and women in employment.

109. Before the introduction of this normative innovation, any breach of the provisions of Article 28 above was punishable, within the meaning of Article 41 (2) of Legislative Decree No.198/2006, by a pecuniary penalty ranging from €250 to €1,500 against the employer.

110. Following the decriminalisation, the violation of Article 28 now entails an administrative penalty ranging from €5,000 to €10,000. In this case, the order for payment procedure provided for in Article 13 of Legislative Decree No. 124/2004 is excluded and, therefore, the possibility of the violator to pay a minor fine. Within sixty

days of the notification of the administrative offense, only the payment of a minor fine is allowed, up to a third of the maximum fine laid down for the infringement found, i.e. €3,333.33 (according to the ordinary criteria established by Article 16 of Law No. 689/1981).

111. In this respect, the Government believes that despite the decriminalisation, the current sanctions are particularly effective, primarily because of the higher amounts that the offender is obliged to pay, which has an important dissuasive effect. Moreover, according to the Government, the decriminalisation avoids the extension of delays related to the prosecution under criminal law, by ensuring the immediate and direct application of a sanction in the event of discrimination.

Pay transparency and job comparisons

112. The Government also refers to Article 46 of Legislative Decree No. 198/2006, according to which public and private companies employing over 100 employees are required to prepare a report at least every two years on the situation of female and male staff in each of the professions. The report provides information in relation to the state of recruitment, training, professional promotion, changes in category or qualification, dismissals, early retirement and retirement payments and the remuneration actually paid. The report shall be forwarded to the company trade union representatives and to the regional equality councilor. If, within the prescribed deadlines, the companies do not transmit the report, the Regional Labour Directorate invites the companies themselves to provide it within sixty days. In the event of non-compliance, there are sanctions. In the most serious cases of non-compliance with this requirement, the suspension for one year of the social security benefits that may be enjoyed by the company may be ordered.

113. The Government states that the Ministry of Labour and Social Policy has implemented a software package that will simplify the processing and transmission of gender equality reports by enterprises. This new software package will also improve and speed up the processing of captured data by making it easier to read and analyse. The pay data will also be taken into account, which will ensure greater transparency, once this device is operational at full speed.

Equality bodies and other institutions

Equality Advisors

114. According to the Government, equal opportunities are regulated by Legislative Decree No. 198/2006, recently amended by Legislative Decree No. 15/2015, which reformed the competent bodies - Equality Advisers and the National Gender Committee.

115. The Equality Advisors (Articles 12-20 and 36-41 of Legislative Decree No. 198/2006) are public officers, present on the whole of the territory at the national, regional and provincial levels to ensure compliance with principles of non-discrimination in the workplace in all relevant aspects, including access to the labour market. Their area of competence also covers professional relations and their evolution, as well as identifying, where applicable, discriminatory situations both in career progression and in remuneration (Article 15 of Legislative Decree No. 198/2006).

116. With regard to the violation of the right to equal pay, the Equality Advisors act free of charge on the mandate of the worker who seizes them. They are also authorised to conduct preventive conciliation proceedings in cases of discrimination (including wages) and to intervene in a court action (Articles 36-41). The Equality Advisors also conduct surveys of the world of work that relate to salary issues. They perform this function by:

- the preparation of a biennial report on the status of the workforce of private enterprises with more than 100 employees, within the meaning of Article 46 of Legislative Decree 198/2006, which reviews staff data regarding qualifications, career progression, and also the remuneration actually paid;

- the formulation of a mandatory opinion on the Positive Action Plans of public administration. These plans are designed to remove the barriers that prevent the full realisation of equal opportunities in the workplace (Article 48 of Legislative Decree No. 198/2006);

- in the performance of their duties within the meaning of Article 15 of Legislative Decree No. 198/2006, the Local Gender Councilors may conclude specific agreements with the Labour Inspection Service, with a view to coordinating activities, including the collection of data on the status of hirings broken down by gender, including the remunerations paid.

117. The Equality Advisors, in the sense of Article 15, para 6 of Legislative Decree No. 198/2006 are required to submit a progress report once a year before 31 March. All reports are then analysed by the National Gender Advisor. These reports are based on the activities actually carried out by local advisers, to whom the workers directly address any claim concerning work-related gender discrimination, including wage inequality. As part of their duties, local councilors also collaborate with labour inspectors at the local level, on the basis of memoranda of understanding adopted at this level. With regard to the biannual reports provided for in Article 46 of Legislative Decree No. 198/2006, undertakings which do not comply with the transmission obligation incur an administrative penalty and/or, where applicable, the suspension of tax benefits for one year.

Labour Inspectors

118. According to the Government, the supervisory action of labour inspectors for equal treatment and equal opportunities between men and women also requires a

fruitful exchange of information between the National Labour Inspectorate and the Gender Advisers.

119. According to Article 15 of Legislative Decree No. 198/2006, the National Inspectorate and its local offices and the National Adviser for Gender Equality as well as the Provincial Advisers have established a strong collaboration to launch initiatives to facilitate the full implementation of equality and equal opportunities of men and women, with a view to preventing and eliminating discrimination based on gender, by encouraging, inter alia, the coordination of respective activities, the exchange of experiences and the professional training in the field.

120. The Government maintains that equal opportunities and, in particular, gender equality and protection of the rights of women workers are regularly monitored and the follow-up action is designed on the basis of the findings of the monitoring.

121. The Labour Inspectors also have to validate that the cessation of employment or resignation has indeed been on a voluntary basis and there has been no coercion or discrimination. In the absence of such validation, the termination of the labour contract will not come into effect. The National Labour Inspectorate follows these validations on the basis of information it receives from local labour inspectorates and prepares the annual report, in collaboration with the National Equality Adviser. In this respect, the Government states that the analysis of the data for the 2014-2016 period indicates that the number of voluntary resignations of employed mothers has gradually decreased compared to that of fathers, showing a 7% drop in three years. In the light of the reasons given by most of the employed mothers during interviews with labour inspectors, the breaks and resignations were not related to discrimination but rather to practical difficulties, such as the reconciliation between professional life, to the high cost of childcare services, the absence of family members who can provide support or objective logistical problems (change of place of residence, distance between home and work, etc.)

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

122. 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.

123. 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.

124. 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.

125. 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).

126. As regards the statutory framework on equal pay in Italy, the Committee notes that according to Article 37 of the Constitution, “a working woman shall have the same rights and, for equal work, the same remuneration as a male worker”. The Committee further notes that Article 28 of Legislative Decree No.198/2006 prohibits any discriminatory conduct of an employer in ensuring equal pay. The concept of pay is not defined by the law, but has been widely construed by the Italian courts, on the basis of collective agreements as including any economic benefit in cash or in kind directly and indirectly paid on the ground of the employment relationship.

127. The Committee considers that the obligation to recognise the right to equal pay for work of equal value in the legislation is satisfied.

Effective remedies

128. 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.

129. 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.

130. 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).

131. 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.

132. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Italy, 2019 that obstacles in relation to access to courts include the difficulty of proving discrimination cases and the widespread lack of knowledge about this issue by the victims, union representatives, lawyers, judges and labour inspectors. There are very few cases on equal pay in Italy.

133. The Committee further notes from the above-mentioned Country Report that the general remedy of nullity is enforceable for all discriminatory acts. Compensation for economic damage can also be awarded following the general principles on contractual and extra-contractual liability. An upper limit for compensation in discrimination is not foreseen in the legislation. For the purposes of determining the amount of the compensation, the court shall take into account whether the discriminatory act or conduct constitutes retaliation against a previous legal action or unfair reaction to a previous activity of the injured party.

134. The Committee firstly refers to its conclusion on Article 4§3 (Conclusions 2014, Italy) and Article 20 (Conclusions 2016, Italy), where it held that the situation was in conformity with the Charter as regards remedies and sanctions. The Committee also noted in its conclusion on Article 24 (Conclusions 2016) that the case law aligned retaliatory dismissal as a consequence of a legitimate behaviour of the worker, with discriminatory dismissal based on an unfair and arbitrary reaction. Retaliatory dismissal is sanctioned by nullity, if there are no other legitimate reasons, and the employer is required to reinstate the worker.

135. The Committee then notes that under Article 38 of Legislative Decree No. 198/2006, associations and organisations promoting respect for equal treatment between female and male workers as well as trade unions are entitled to act on the workers' behalf. The social partners' awareness of these issues, however, is still not uniform in all regions and sectors. Case law is scarce on gender anti-discrimination issues and no relevant examples have been recorded as regards gender equality interest groups or other legal entities.

136. The Committee further observes that, as regards the burden of proof, according to Article 40 of Legislative Decree No. 198/2006 when the applicant provides factual information (including statistical data relating to recruitment, remuneration schemes, the assignment of tasks and qualifications, transfers, career progression and dismissals) which can establish, in precise and consistent terms, the presumption of the existence of acts, agreements or conduct which are discriminatory on grounds of gender, the burden of proof that there has been no discrimination shall lie with the defendant.

137. Concerning sanctions, Article 41 of Legislative Decree No. 198/2006 provides that failure to comply with the provisions of the Decree shall be subject to a fine of between €5,000 and €10,000.

138. In addition to the provisions of Legislative Decree No. 198/2006, with regard to the burden of proof and compensation for damages in cases of disputes concerning discrimination, Section 28 of Legislative Decree No. 150/2011 provides that where the claimant offers factual information (including statistical information) from which the existence of discriminatory acts, agreements or conduct may be presumed, the burden of proving the absence of discrimination shall lie with the defendant.

139. In a judgment in a gender discrimination case, the judge can order the defendant to pay compensation for damages (including non-pecuniary) and order the cessation of the discriminatory behaviour, conduct or act, adopting, also with regard to the public administration, any other measure suitable to remove its effects. In order to prevent repetition of the discrimination, the court may order the adoption, within the period laid down in the measure, of a plan to remove the discrimination found. In cases of collective discriminatory behaviour, the plan shall be adopted after consultation with the applicant collective body.

140. In view of all of the above and despite the fact that certain obstacles remain, the Committee considers based on the information at its disposal that the obligation to ensure access to effective remedies has been satisfied.

Pay transparency and job comparisons

141. 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.

142. 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.

143. 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).

144. 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.

145. 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.

146. As regards pay transparency in Italy, the Committee observes that Article 46 of the Code of Equal Opportunities provides for the release of information on pay to individuals and other data at enterprise level. It provides that, every two years, public and private companies employing more than 100 workers shall submit to Regional Equality Advisers and trade unions a report concerning the situation of male and female workers in all jobs existing in a company. The report should cover appointments, training, promotion, pay levels, mobility between categories and grades,

other mobility aspects, redundancy funds, dismissals, early retirement and retirement, and the remuneration actually paid. Moreover, the Regional Equality Adviser shall also elaborate the data of the report and send them to the National Equality Adviser, to the Ministry of Labour and to the Department for Equal Opportunities that is part of the Prime Minister's Office. Moreover, under Article 10 of the Code, the National Equality Committee can request the local Labour Inspectorate to obtain gender-differentiated data at the workplace as regards hiring, vocational training and career opportunities.

147. The Committee further notes from the above-mentioned Country Report that Italy has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency. A Draft Delegation Act was presented to Parliament on 31 March 2015 and from 30 June 2015, it has been under examination by the Commission for Labour. In 2019, the draft had not yet become law.

148. With respect to job classification systems, the Committee notes that Article 28 of the Code of Equal Opportunities provides that occupational classification systems applied for the purpose of determining remuneration shall adopt common criteria for women and men and be drawn up so as to eliminate any discrimination. However, the Committee notes that according to the Direct Request on the Equal Remuneration Convention (No. 100) on Italy (2018) of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), there is no information concerning the implementation of Article 28(2) of the Code of Equal Opportunities, under which systems of job classification determining remuneration shall adopt common criteria and be developed with a view to eliminating discrimination. Moreover, as regards the definition of "equal value", the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Italy 2019 that domestic law does not lay down any parameters for establishing the equal value of the work performed.

149. The Committee notes from the above-mentioned Country Report that the main problem as regards the gender pay gap is difficulties in detecting it, as it can arise from gender-neutral criteria. Most of the time, these criteria can easily be explained by the employer as being objectively necessary and proportionate criteria, responding to a real need of the business. The Committee notes that domestic case law on equal pay, and broadly speaking on gender discrimination, is scarce and does not indicate whether the claimant should point to an actual comparator.

150. As regards the scope of job comparisons, the Committee has observed in its conclusion on Article 20 (Conclusions 2016, Italy) that under domestic law, pay is determined by collective bargaining, which establishes minimum pay by economic sector and by qualification. Consequently, as a rule, in all the companies within the same economic sector, the national collective agreement (CCNL) is applied offering equal pay for equal work to all workers of those companies. Instead of the CCNL, employers may apply the Second-Level Company Contract, under which workers are

awarded higher pay if they increase their productivity. As a result, it may occur that for equal work a worker is paid more or less in one company than a worker doing the same job in another company belonging to the same economic sector. The Committee understands that job comparisons are in principle possible across companies and the scope of such comparisons is not unduly restricted to the same company only.

151. However, the Committee observes that as regards pay transparency, the Committee considers that it has not been shown that job classification systems are applied and used effectively in practice to prevent gender pay discrimination and there is no evidence that the notion of 'equal value' is adequately defined in domestic case law. The Committee considers that it has not been demonstrated that a potential victim of pay discrimination may have access to all the necessary information with a view to effectively bringing a case to court.

152. In view of the above, the Committee considers that the obligation to ensure pay transparency in practice has not been satisfied.

Equality bodies and other institutions

153. 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.

154. 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.

155. 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.

156. 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.

157. The Committee notes that in Italy the Equality Advisors are charged with several tasks: they participate in central and local (following their respective territorial competence) employment commissions with the appropriate powers; promote positive action; and monitor the implementation of employment policies. Furthermore, Decree No. 151/2015 has strengthened the collaboration of equality advisors with the labour inspectors.

158. The Committee notes from the “Legal Opinion concerning state measures in the field of gender pay discrimination” (Institute of Comparative Law, Lausanne, 2013) that discriminatory behaviours often take on a collective importance, which goes beyond the position of a single worker. This has prompted the legislator to recognise the procedural legitimacy of the Equality Advisor, as an institution charged with promoting equality between women and men. The regional equality advisors and the national equality advisor in cases of national importance are entitled to take legal action in the event of collective discrimination even when it is not identifiable in an immediate and direct way. This action makes it possible to obtain a ruling that contains, in addition to the assessment of discrimination, an order to define a plan to remove the discrimination.

159. The Committee further notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Italy 2018 that Articles 37 and 38 of Legislative Decree No. 198/2006 empower Equality Advisors to assist victims of discrimination. Depending on the national or local significance of a case of discrimination, National and Regional Equality Advisors can act directly in their name in cases of collective discrimination, even where the workers affected by discrimination are not immediately identifiable. Regional and Provincial Advisers can also proceed when delegated by an individual employee or can intervene in the process initiated by the latter. National and Regional Equality Advisers can also propose a conciliation agreement before going to court, requesting the person responsible for discrimination to set a plan to remove it within 120 days. If the plan is considered to be suitable for removing discrimination, on the Equality Adviser’s demand the parties shall sign an agreement, which becomes a writ of execution through a decree of the judge.

160. The Committee notes from analysis of the data contained in the annual reports of the Local Equality Advisors, as compiled and presented by the National Equality Adviser (2019) as regards individual discrimination, there were 2,948 cases of workers who reported such discrimination, of which 944 cases taken up by the Advisors. Concerning grounds of discrimination, 26 cases were related to equal pay. As regards collective discrimination, there were 38 cases reported and one case was related to equal pay.

161. The Committee notes that the Equality Advisors can intervene to conduct preventive conciliation proceedings in cases of discrimination (including pay) and can intervene in a court action in the event of collective discrimination. Moreover, the Committee notes from the above-mentioned Country Report that the Equality Advisors have a monitoring and promotion role and provides assistance to victims. They also conduct monitoring in cooperation with the Labour Inspectorate.

162. On the basis of the above, the Committee considers that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

Concluding assessment

163. Firstly, the Committee considers that there is an adequate legal basis for equal pay in the legislation.

164. Secondly, despite the remaining obstacles, the Committee considers that access to effective remedies in case of gender pay discrimination is ensured.

165. Thirdly, the Committee considers that the lack of transparency does not help shed light on the reasons for pay inequalities and is an obstacle for victims of pay discrimination to effectively enforce their rights. The Committee considers that it has not been shown that pay transparency legislation (Article 46 of Legislative Decree No. 198/2006) is applied in practice as an enabling tool for workers or social partners to take appropriate action, such as to challenge pay discrimination before the courts. The obligation to ensure pay transparency has therefore not been satisfied.

166. Finally, the Committee considers that the Equality Advisors fulfil the functions of monitoring and support to victims and the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been fulfilled.

167. For this reason and considering that the Government has not been efficiently engaged in lifting the obstacles that arise when the workers claim appropriate remedies in order to assert their rights, the Committee holds that there is a violation of Articles 4§3 and 20.c of the Charter.

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

168. 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

169. According to UWE, the Government’s submissions include only very few relevant and reliable figures. UWE refers to Eurostat statistics regarding the gender pay gap, according to which in February 2017 the gender pay gap was 11.0%, the hourly pay gap was 32.7% and the gender employment rate gap stood at 56.3%.

170. UWE maintains that the situation is very different from that described by the Government as the latter makes choices to include some criteria in its statistics and to exclude others in an attempt to mask a more severe wage inequality. To understand the reality of the pay gap, it must be corrected or refined by other indicators and data. The Government does not indicate the methodology used to calculate the gap. It does not therefore reveal the pay inequalities related to the fact that women are much more likely to work in part-time jobs than men.

171. According to UWE, the Government 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.

2. The respondent Government

172. The Government states that the average hourly pay gap stood at 5.5% in 2015, according to Eurostat, which places Italy well below the European average of 16.3%. Moreover, this result is mainly due to the aggregation effect of data from the public sector (where the pay gap is very small) and private (where it is aligned with that of other European countries).

173. The Government refers to the labour market reform introduced into the Italian law by the Jobs Act and states that Legislative Decree No. 80/2015 provides for a series of provisions aimed at reconciling work and private life.

174. According to the Government, private life has an impact on the working lives of women who penalise their career opportunities and their ability to stay in the labour market. In this respect, the measures laid down by Legislative Decree No. 80/2015 are intended to protect parenthood by encouraging, among other things, the possibility for fathers to use parental leave. Legislative Decree No. 80/2015 also changed the age limit for children from 8 to 12 to take advantage of the leave, with a view to encouraging greater flexibility in the use of these provisions.

175. Moreover, Law No. 92/2012 had already introduced other instruments of conciliation, which provide for the possibility to use service job vouchers for the payment of babysitting services or institutional childcare, which the mother can use as a parental leave alternative. This measure has recently been extended to women carrying on an independent activity and women entrepreneurs.

176. According to the Government, Italy has long been committed to implementing these policies and pursuing their objectives. In recent years Italy has put in place measures, positive actions and experiments of good practice aimed at promoting greater participation of women in the labour market.

B – Assessment of the Committee

a) Key figures as regards equal pay in Italy

177. The Committee notes from Eurostat that in 2017 the gender pay gap in Italy stood at 5.0%, whereas the EU average was 16.0 %. The Committee further notes that in 2016 the gender pay gap in Italy stood at 5.3% (4.4% in 2006, 5.3% in 2010 and 5.5% in 2015). The overall earnings gap in 2014 was 43.7%. The adjusted or “unexplained” gender pay gap was at 12.0% 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

178. 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.

179. 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).

180. 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.

181. 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).

182. 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).

183. 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.

184. 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.

185. The Committee observes that in the Direct Request (CEACR) on the Equal Remuneration Convention (No. 100) on Italy (2018), the CEACR underlined the need for the Government to collect statistics disaggregated by gender on the distribution of men and women in different sectors and occupations and their corresponding earnings (including higher level occupations in the public and private sectors) and to provide information on any measures adopted with the aim of collecting and processing statistical data on gender wage differentials.

186. The Committee notes from the OECD Economic Survey (Italy, 2015) that Italy has very low labour force participation. This is especially true among women and in the south. To some extent, the large informal sector may make up for this, but by no means entirely. The female labour force participation rate is among the lowest in the OECD: 54.4% against the OECD average of 62.6% in 2013.

187. The Committee notes from the European Commission report on the Magnitude and Impact Factors of the gender pay gap in the EU countries (2017) that countries with lower female employment participation tend to exhibit lower measured pay gaps.

In these countries, several low-pay activities like nursing and cleaning are taking place outside the formal labour market and therefore not considered in the measurement.

188. As regards the measures taken to reduce the gender pay gap, the Committee notes from the Concluding Observations of the Committee on the Elimination of Discrimination against Women CEDAW (2017) that three-year plans for affirmative action have been adopted by local public administrations. However, CEDAW has underlined that none of the plans include specific measures aimed at identifying and tackling differentials in remuneration between men and women. CEDAW is also concerned that when it comes to the national machinery for the advancement of women, there is insufficient human, technical and financial resources allocated to effectively coordinate and implement gender equality plans, policies and programmes in all areas and at all levels of government. Besides, there is an absence of an overarching and integrated policy on gender equality at the national level.

189. The Committee also notes from the Concluding Observations of CEDAW that measures were adopted to support the participation of women in the labour market, facilitate the reconciliation of work and family life and encourage shared parental responsibilities. However, CEDAW refers to the disproportionately high unemployment rate among women, the segmentation of the labour market, the continuing horizontal and vertical occupational segregation, the concentration of women in part-time and low-paid jobs, the high number of women leaving the workforce after childbirth, and the difficulties in re-entering the labour market. Moreover, CEDAW also notes entrenched stereotypes concerning the roles and responsibilities of women and men in the family and in society, perpetuating traditional roles of women as mothers and housewives and undermining their social status and educational and career prospects. There are limited measures taken to eliminate stereotypes in the education system, including changes in school curricula and textbooks.

190. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Italy 2018 that under Article 42 of Legislative Decree No. 198/2006, positive actions are defined as measures designed to encourage female employment and to achieve substantial equality between men and women at work by removing obstacles which in practice prevent the achievement of equal opportunities.

191. According to Article 43 of Legislative Decree No. 198/2006, positive actions may be promoted by different actors, both public and private alike. Employers, professional training centres, associations, and trade unions promoting positive actions can also apply for public funding, which is paid according to the available funds. Positive actions organized by employers and the most representative trade unions and positive actions geared towards professional training have preferential access to public funding (Sections 44 and 45).

192. Article 9 of Law No. 53/2000 provides for other kinds of positive action, such as allocation of part of the Fund for Family Policies for undertakings that enforce collective agreements on positive action aimed at allowing parents to adopt a flexible working time schedule and promote reconciliation of private and professional life.

193. The Committee notes that despite the fact that Italy has long been committed to putting in place measures and positive action aimed at promoting greater participation of women in the labour market and thus promoting equality, the female participation rate remains low. The Committee refers to CEDAW which has expressed concern that there is insufficient human, technical and financial resources allocated to effectively coordinate and implement gender equality plans, policies and programmes. The Committee further notes that the unemployment rate among women is disproportionately high. Finally, as the Government itself acknowledges, there is a lack of positive measures to reconcile the professional and personal lives of workers. This is notably due to insufficient public subsidies for assistance services to employed mothers (nurseries, childcare, etc.), which leads to a high cost of caring for children and, consequently, the involuntary preference of employed mothers to quit working in order to focus on family obligations.

194. Furthermore, the Committee notes from the Report of the European Commission on the Gender Pay Gap in Europe from a Legal Perspective (2010) that women (in particular women with small children) avail themselves of measures and special policies to combat unemployment more often than men. However, such measures and policies are often related to ensuring (subsidised) employment at a low level of pay (usually at the level of the minimum wage). Thus, women more often accept lower pay, which impacts negatively on the gender pay gap.

195. The Committee notes from the Concluding observations (2015) of the Committee on Economic, Social and Cultural Rights (CESCR) that there was a sharp difference in the employment rate between women and men, which particularly affects women in the south. Also, the Committee observes that women are concentrated in the informal economy and in low-paid sectors, which perpetuates vertical and horizontal occupational gender segregation and the gender pay gap.

196. The Committee also refers to its conclusion on Article 20 (Conclusions 2016, Italy) where it noted that the employment rate of women of 54.4% in 2014 was over 20 percentage points lower than that of men (73.6%). This rate also varied considerably throughout the country. In southern Italy, it was 15 percentage points lower than the national average (39.6% in 2014). The female unemployment rate in 2014 was 13.8%.

197. The Committee observes that the gender pay gap is relatively low compared to the EU average. It also notes that positive action to fight gender discrimination and promote gender equality in employment is provided for in the legislation, in particular in Legislative Decree No. 198/2006. However, taking into account the size of the informal economy, the Committee considers that the gender pay gap indicator, which is based on statistics collected in the formal labour market and excludes activities in the informal economy does not fully reflect the reality. There is no evidence that measurable progress has been made in tackling gender inequalities in the labour market.

198. Therefore, the Committee considers that neither the obligation to collect statistical data on pay nor the obligation to adopt measures to promote the right to equal opportunities of women in the labour market have been satisfied.

199. 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

200. Article 20.d 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

201. According to UWE, Law No. 120/2011 sets a timetable for more women to be represented on company boards, albeit only for listed companies and companies controlled by public authorities. A quota of 30% was to be respected at the following two board membership renewals. This rule has resulted in an increase in the number of women on boards. In 2015, the proportion reached 28.6%, exceeding the European average of 22.7%.

202. UWE claims that the concrete and effective reality is a much lower percentage because the vast majority of women do not work in the companies covered by this scheme. The State does not provide evidence of effective control and practical application of penalties for failure to comply with the requirement of the presence of at least one third of each sex in the boards. Therefore, UWE considers that Italy fails to meet the requirements of Article 20.d of the Charter.

2. The respondent Government

203. According to the Government, Law No. 120/ 2011, Equality of Access in the administrative and supervisory bodies of companies listed on regulated markets, listed companies and companies controlled by public administration should reserve for the least represented sex at least one third of places within their administrative and control bodies. Following the entry into force of this law, the percentage of women in the management positions of listed companies has increased considerably. According to the latest CONSOB data, the proportion of women on the board of directors of listed companies has increased gradually to 33.5%. The Government believes that this result is very important, especially as in 2010 the participation of women in Italian listed companies was only about 6%.

204. Following the entry into force of the Decree of the President of the Republic No. 251/ 2012, public companies controlled by public administration, not listed on regulated markets, have experienced a considerable increase in the presence of women in the labour market. The implementation of these provisions is monitored by the Department of Equal Opportunities of the Presidency of the Council of Ministers. According to the data updated in September 2017, four years after the entry into force of the obligations provided for in the above-mentioned decree, women represent almost 30.9% of the members of the administration and management of public companies at the national level.

205. In view of the data relating to the low percentage of women serving as sole trustees of publicly-owned companies, the Government has continued its efforts to promote gender balance through the promulgation of Legislative Decree No. 175/2016 (Single Text for Publicly Owned Companies). This Decree lays down specific provisions aimed at strengthening the principle of gender balance in public companies, notably by introducing the obligation to reserve at least one-third of the posts of director of the least represented sex.

B – Assessment of the Committee

206. 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).

207. 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%.

208. 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.

209. The Committee notes that according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, in 2016 the representation of women on boards of largest listed companies stood at 30% and at 36.6% in 2019 (the EU-28 average in 2019 was 27.8%).

210. The Committee notes from the Country Report on Gender Equality of the European Network of Experts in Gender Equality and Non-Discrimination (Italy, 2018) that a quota system has been introduced by Law No. 120/2011 for the appointment of managing directors and auditors of listed companies and state subsidiary companies, where each gender cannot be represented in a proportion lower than one third. This rule shall be enforced for three periods of tenure for directors and auditors. The sanction procedure in the event of an infringement of the rule is very gradual and only after two warnings by the Consob (the National Securities and Exchange Commission), which is also charged with monitoring compliance with the gender balance principle, can the penalty of the dissolution of the Company Board be applied. As regards state subsidiary companies not quoted on the regulated market, the same principles are enforceable (Legislative Decree No. 251/2012).

211. The Committee notes that the Government has taken measures to meet its positive obligations to tackle vertical segregation in the labour market. These measures have led to a clear and significant trend for improvement in such representation in recent years.

212. Therefore, the Committee holds that there is no violation of Article 20.d of the Charter.

IV. REQUEST FOR COMPENSATION

213. 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.

214. 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 regards 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 11 votes to 4, 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 pay transparency is not ensured;
 - unanimously, 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 as the obligation to collect statistical data on pay has not been ensured and as there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- unanimously, that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions within private companies.



Petros STANGOS
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary