



European
Social
Charter

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

DECISION ON THE MERITS

Adoption: 5 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Norway

Complaint No. 135/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 310th session in the following composition:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 23 May, 12 September 2019, 16 and 17 October 2019, 2,3 and 5 December 2019,

On the basis of the report presented by Giuseppe PALMISANO,

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 Norway 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 Norway.
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. The Government's submissions on the merits were registered on 12 October 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 21 December 2017. On 17 October 2017, UWE asked for an extension to the deadline for presenting its response. The President of the Committee extended this deadline until 12 January 2018. UWE's response was registered on 11 January 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 15 March 2018. On 27 February 2018, the Government asked for an extension to the deadline for presenting its further response. The President of the Committee extended this deadline until 16 April 2018. The Government's further response was registered on 16 April 2018.

11. Pursuant to Rule 32A of the Rules, the President invited EQUINET to submit observations by 30 March 2018. EQUINET indicated that it was not able to submit information concerning Norway.

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 Norway constitutes a violation of Articles 1, 4§3 and 20 as well as Article E:

- Firstly, UWE alleges that the pay gap between women and men still persists. Unequal pay is a reality, despite the international obligations entered into and the domestic legislation enacted.
- Secondly, UWE alleges that only a very small number of women occupy decision-making positions within private companies since there are no effective legislative measures to ensure the sufficient representation of women in decision-making bodies within private enterprises. The 40% quota for the under-represented sex applies only to listed companies.

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

B – The respondent Government

15. The Government submits that its commitment towards ensuring equal pay is strong and that continuous efforts are made in the area, and it therefore asks the Committee to find that no violation of Articles 4§3 and 20 has occurred.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of international law and Eurostat statistics, concludes that the pay gap between men and women lies above 5.5% in all the countries concerned. The ETUC therefore observes that, as the statistics highlight, the principle of equal pay for work of equal value is not guaranteed in practice. It also indicates that this is even more true when the lack of clarity in relation to the calculation is taken into account (for example, to what extent do they reflect other discriminatory elements, such as career differences which can lead to an increase in the pay gap or issues related to the source of data (for instance, undocumented work or the informal economy, both of which are sectors in which the gender pay gap is probably even higher).

17. The ETUC further refers to data of the European Institute for Gender Equality (EIGE), with regard to the representation of women in decision-making positions in private companies, and concludes that only two countries achieved the European Commission's proposed 40% objective for the representation of women on Boards, namely France and Norway. The ETUC points out in its conclusion, however, that the data in question only refers to the 'largest listed companies', and not to other listed companies and non-listed companies which represent, quantitatively, a much higher share. The ETUC therefore assumes that none of the countries concerned reach the threshold of 40%.

18. The ETUC indicates that the two main elements raised in the complaint differ from a legal point of view. Equal pay is a classic fundamental principle, and despite States traditionally providing for it in legislation, they do not sufficiently enforce it. The second ground, which concerns the under-representation of women in decision-making boards in private companies, is a fairly new element appearing at international and national level as a problem to be seriously dealt with. Nevertheless, both elements are covered by Article 20 of the Charter which guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex".

19. With respect to the pay gap between men and women, the ETUC raises the point that, in order to assess the conformity or non-conformity of the situation in each country with regard to the Charter, it is necessary to examine both substantive and procedural dimensions.

20. At the substantive level, there is a quantitative and a qualitative dimension to be considered. According to the ETUC, only a 'zero' pay gap should be permitted. However, on the basis that the interpretation of 'equal' does not apply in the strict sense of the word, a reasonable threshold could be a maximum of 5%. With respect to the qualitative dimension, as the statistics show, the pay gap between men and women continues to exist. The ETUC considers that it is no longer sufficient that States are free to choose the means by which they ensure equal pay, and point to the need to go further by taking into account the evolution of international case law. Accordingly, it

would appear important to require a clear and comprehensive legislation, which should at least ensure that:

- the coverage of all workers is guaranteed;
- the general legal concept also includes indirect discrimination;
- the term 'pay' contains all elements of remuneration as well as supplementary pension;
- the comparison comprises as a minimum:
 - transparency
 - the reach of comparison between jobs performed by women and men being construed as wide as possible
 - a wide definition of 'equal value', also encompassing work that is of an entirely different nature, which is nevertheless of equal value;
 - the necessity to evaluate the respective jobs with criteria excluding any kind of discrimination, even indirect;
 - the assessment concerned is followed by effective consequences in cases where the results show that there is discrimination.

21. With respect to the under-representation of women in decision-making positions in companies, as a consequence of the decision of admissibility of the Committee, it follows that this aspect falls within the scope of Article 20 of the Charter.

22. At the substantive level, the ETUC considers that it is necessary to provide for a minimum threshold for representation of both sexes in decision-making positions. Although perfect equality, that is to say 50% of representation of both sexes, would not be a requirement, the ETUC considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. As regards Norway, according to the ETUC, in general terms, it is clear that the gender pay gap remains above 0%. This situation is not at all compatible with the principle of equal pay for work of equal value, even less so when taking into account the requirement of 'effectiveness' enshrined in the introductory words of the relevant articles.

24. As regards substance, in Norway active measures have been in progress for many years aimed at evening out unfair pay differences between women and men. Pay discrimination is forbidden by law and an employer is obliged by law to actively survey and remedy discriminatory pay. No further legislative measures in the area are planned at present; it is a matter of ensuring compliance with the existing rules.

25. According to the ETUC, the fact that a phenomenon is prohibited does not, however, automatically mean that it ceases or disappears. Pay discrimination between women and men still exists despite the fact that it is prohibited and that there are a number of tools both in legislation and collective agreements that are intended to even out pay differences. However, progress is in the right direction.

26. However, from a substantive perspective, the ETUC believes that there are elements which should (at least in combination) lead to a violation of Article 20, such as the existence of the pay gap (statistical evidence) and the fact that the official

statistics are still excluding small (micro) sized enterprises, which makes it most probable that the Gender pay gap is even higher in these enterprises.

27. As regards a procedural perspective (i.e. a general framework to ensure a satisfactory application and enforcement/supervision of the principle of equal pay), despite a good functioning labour market model build on very active social partners and strong collective bargaining (complemented with supervisory/enforcement bodies such as the labour inspectorate), the result of eliminating the gender pay gap is not (yet fully) achieved. From the point of view of the ETUC this illustrates that there still is a violation of Article 20 of the Charter also from the procedural perspective.

28. Concerning the under-representation in decision-making positions within private companies this problem has only been addressed in more recent years. As regards substance, statistical evidence shows that there is still an underrepresentation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is not to be disputed that women are not sufficiently represented within these bodies. From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

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

OTHER OBSERVATIONS

A – The European Union

30. In its observations regarding University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden (Complaints Nos. 124-138/2016), the European Union, through the European Commission, highlights the European Union's legal framework and policy action of relevance to the matters raised in the complaints.

31. 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).

32. 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.

33. 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

34. Moreover, several other Commission actions relate directly to some of the elements of the complaints, such as combating segregation in occupation and sectors, by supporting transnational projects to tackle stereotypes and segregation in education, and patriarchal attitudes. Besides, the European Commission monitors the national legislation and policies of Member States regarding the gender pay gap and raises awareness about it. The Commission reports regularly about the evolution of the gender pay gap, the earnings and pensions gap in Europe. The Commission aims at combating vertical segregation, by working towards the adoption of a proposal for a Directive in this field.

35. 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.

36. 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)

37. EQUINET has not submitted observations regarding Norway.

RELEVANT DOMESTIC LAW

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

A – The Working Environment Act

Section 13-8. *Burden of proof*

If the employee or job applicant submits information that gives reason to believe that discrimination has taken place in contravention of the provisions of this chapter, the employer must substantiate that such discrimination or retaliation has not occurred.

Section 13-9. *The effects of breach of the discrimination prohibition*

(1) Anyone who has been discriminated against in contravention of section 13-1 may claim redress and compensation regardless of whether the employer can be blamed for the discrimination.

Such compensation shall cover financial loss resulting from the discrimination. Compensation for damage of a non-pecuniary nature shall be stipulated in the amount that is found reasonable in view of the extent and nature of the damage, the circumstances of the parties and other facts of the case.

(2) Provisions laid down in collective pay agreements, contracts of employment, regulations, bylaws, etc., that are in contravention of the provisions of this chapter shall not be valid.

The Gender Equality Act of 2013

The Gender Equality Act provides the framework for all efforts to promote gender equality in Norway. Its purpose is to promote equality irrespective of gender. It prohibits all discrimination on grounds of gender but is particularly aimed at strengthening the position of women. It applies in all areas of society. As well as being an important guarantee against discrimination, the Act provides a basis for proactive measures. The Act contains a series of specific obligations that are meant to ensure equal opportunities and equal treatment in matters of employment for men and women. The provisions are intended to address both individual and structural discrimination.

Chapter 2 prohibits direct and indirect discrimination, harassment and instructions to discriminate in all areas of society including employment matters. Section 17 of the act specifies the scope and content of the provision in work life matters. It underlines i.e. that discrimination regarding promotion, wage and remuneration is prohibited (letter b and d)).

Section 7 enables authorities and others to introduce positive measures for one gender for a limited period of time in order to promote gender equality. The provision enables for example employers to use certain positive measures to recruit more women for decision-making positions within the enterprise. The use of positive measures is also an important tool to counterbalance the tendency to choose gender stereotypical education and line of work. As explained above the gender divided labour market causes gender inequality in pay and career opportunities.

Chapter 3 requires public authorities and employer and employee organisations to work actively and systematically to promote gender equality. Section 23 requires employers to make active, targeted and systematic efforts to promote gender equality and prevent discrimination in their undertakings. The act specifies that the activity duty shall encompass matters such as recruitment, pay and working conditions, promotion, development opportunities and protection against harassment. Section 24 requires employers to report annually on the gender equality status and activities in their enterprises.

A dismissal of a female worker on the grounds that she has asked for equal pay for equal work will not be valid, and the employee may have such a dismissal declared void by the courts of law.

Such actions would also be violations of the Gender Equality Act,

Section 21 states that women and men are entitled to equal pay for work of equal value. Women and men in the same undertaking shall receive equal pay for the same work, or work of equal value. Pay shall be set in the same way for women and men without regard to gender. Whether the work is of equal value shall be determined following an overall assessment in which emphasis is given to the expertise required to perform the work and other relevant factors, such as effort, responsibility and working conditions.

Section 22 states that an employee who suspects wage discrimination may require the employer to provide written information about wage levels and about the criteria used to determine wages for comparable employees. This duty promotes greater wage transparency in the workplace, which is important to the effectiveness of the discrimination protection.

Section 22. *Employer's disclosure duty regarding pay*

A worker who suspects discrimination in the setting of pay shall be entitled to demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay of the person or persons with whom the person in question is making a comparison.

A person who receives information about pay pursuant to this provision shall be subject to a duty of confidentiality and shall sign a confidentiality declaration. This shall not apply in the case of information covered by the Freedom of Information Act.

An employer who releases pay information about an employee under this provision shall simultaneously inform the person in question of what information has been released, and to whom.

Section 23. *Employer's activity duty*

Employers shall make active, targeted and systematic efforts to promote the purpose of this Act in their undertakings. The activity duty shall encompass matters such as recruitment, pay and

working conditions, promotion, development opportunities and protection against harassment.

Section 24. Employer's reporting duty

Employers shall report on:

- a) the actual state of affairs as regards gender equality in their undertaking, and
- b) equality measures that have been implemented and that are to be implemented to satisfy the activity duty pursuant to section 23.

39. In June 2017, the legislative body (*Stortinget*) adopted a comprehensive Equality and Anti-Discrimination Act, which entered into force in January 2018 and replaced the Gender Equality Act of 2013. The provisions of the Gender Equality Act are largely maintained in the new comprehensive act, with some exceptions. In drafting a comprehensive equality and anti-discrimination act the Norwegian authorities have recognised the need to clarify some of the legal obligations relevant for promoting equal opportunities and equal treatment in matters of employment and equal pay. There have also been some changes in the enforcement mechanisms to ensure an effective implementation of the act.

B – Equality and Anti-Discrimination Act

Entry into force 01.01.2018

Section 14. Prohibition against retaliation

It is prohibited to retaliate against anyone who has submitted a complaint regarding breach of this Act, or who has stated that a complaint may be submitted, unless the person in question has acted with gross negligence. The prohibition in the first paragraph applies correspondingly to witnesses in a complaint case, and to persons who provide assistance in a complaint case. It is prohibited to retaliate against anyone who has failed to follow an instruction that breaches section 15.

Section 24. Duty of public authorities to promote equality

Public authorities shall make active, targeted and systematic efforts to achieve the purpose of this Act.

Section 25. Duty of employer and employee organisations to promote equality

Employer and employee organisations shall, in their fields of activity, make active, targeted and systematic efforts to promote equality and prevent discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity and gender expression.

Section 26. Duty of employers to promote equality

All employers shall, in their operations, make active, targeted and systematic efforts to promote equality and prevent discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity and gender expression. Such efforts shall encompass recruitment, pay and working conditions, promotion, development opportunities, accommodation, the opportunity to combine work with family life and preventing harassment. All public undertakings, regardless of size, and private undertakings that ordinarily employ more than 50 persons shall, in the context of their operations

Section 26a. Duty of employers to issue a statement

All employers shall issue a statement on: a) the current state of affairs with regard to gender equality in the undertaking, and b) equality measures implemented or planned to promote the Act's purpose of equality irrespective of gender. Public undertakings, and private undertakings that ordinarily employ more than 50 persons, shall issue a statement on equality measures implemented or planned to promote the Act's purpose of equality irrespective of ethnicity, religion, belief, disability, sexual orientation, gender identity and gender expression. The duty to issue a statement applies to undertakings with a statutory duty to prepare an annual report. Such undertakings shall include the statement in the annual report. The duty to issue a statement also applies to public authorities and public undertakings with no duty to prepare an annual report. Such undertakings shall include the statement in their annual budget. 0 Added by Act 19 December 2017 No. 115 (in force 1 January 2018).

Section 28. Gender balance of official committees, etc.

When a public body appoints or selects a committee, board, council, tribunal, delegation, etc., both genders shall be represented, as follows: a) If the committee has two or three members, both genders shall be represented. b) If the committee has four or five members, each gender shall be represented by at least two members. c) If the committee has six to eight members, each gender shall be represented by at least three members. d) If the committee has nine members, each gender shall be represented by at least four members. e) If the committee has more members, each gender shall account for at least 40% of the members. The first paragraph also applies to the appointment and selection of deputy members. The Ministry may grant exemptions from the gender-balance requirement if it has proven impossible to find a sufficient number of qualified members representing both genders. The first paragraph does not apply to committees, etc. which pursuant to law shall only have members taken from directly elected assemblies. The selection of committees, etc. by popularly elected municipal or county authority bodies is governed by the provisions of the Local Government Act. The King will issue regulations on enforcement and reporting. The King may also issue regulations containing supplementary provisions pursuant to this section.

Section 29. Prohibition against discrimination in employment relationships, etc.

The prohibitions in chapter 2 apply to all aspects of an employment relationship. This includes the following a) announcement of a position, b) appointment, reassignment and promotion, c) training and skills development, d) pay and working conditions, and e) cessation. The first paragraph applies correspondingly to employers' selection and treatment of self-employed persons and hired workers.

Section 31. Employer's disclosure duty to job seekers

Job seekers who consider themselves to have been disregarded in breach of this Act may demand that the employer provide written information about the person who was appointed. The employer shall provide information about education, experience and other clearly measurable qualifications.

Section 32. Employer's disclosure duty relating to pay

A worker who suspects discrimination in the setting of pay may demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay of the person or persons with whom the worker is making a comparison. A person who receives information about pay pursuant to this provision is subject to a duty of confidentiality and shall sign a confidentiality declaration. This does not apply to information that is public pursuant to the Freedom of Information Act. An employer who provides pay information about a worker pursuant to this provision shall simultaneously inform the worker of what information has been provided, and to whom.

Section 34. Equal pay for work of equal value

Women and men in the same undertaking shall receive equal pay for the same work or work of equal value. Pay shall be set in the same way, without regard to gender. The right pursuant to the first paragraph applies irrespective of whether the work relates to different branches or pay is governed by different wage agreements. Whether the work is of equal value is determined by means of an overall assessment in which emphasis is given to the expertise that is required to perform the work and other relevant factors, such as effort, responsibility and working conditions. «Pay» means ordinary remuneration for work plus all other supplements, advantages and other benefits provided by the employer.

Section 37. Burden of proof

Discrimination shall be assumed to have occurred if circumstances apply that provide grounds for believing that discrimination has occurred and the person responsible fails to substantiate that discrimination did not in fact occur. This applies in the case of alleged breaches of a) the provisions of chapter 2, with the exception of section 13, sixth paragraph, b) the provisions on universal design in sections 17 and 18, c) the provisions on individual accommodation in sections 20 to 23, and d) sections 29, 30, 33 and 34.

Section 38. Compensation and damages

A person who is the subject of treatment in breach of: a) the provisions of chapter 2, with the exception of section 13, sixth paragraph b) the provisions on individual accommodation in sections 20 to 23 c) sections 29, 30, 33 and 34 may claim compensation and damages.

Section 40. Right of organisations to act as authorised representatives

In cases processed by the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal, an organisation that has anti-discrimination work as its sole or partial purpose may be used as an authorised representative. In cases before the courts, a person appointed by and associated with an organisation that has antidiscrimination work as its sole or partial purpose may be used as counsel. This does not apply before the Supreme Court. The court may refuse to accept an appointment as counsel if the court finds there to be a risk that counsel may be insufficiently qualified to safeguard the party's interests satisfactorily. In addition to the authorisation specified in section 3-4 of the Dispute Act, counsel shall at the same time submit written information from the organisation regarding counsel's qualifications.

C – Act relating to the Equality and Anti-Discrimination Ombud and the Anti-discrimination Tribunal (Equality and Anti-Discrimination Ombud Act)

Chapter 2. The Equality and Anti-Discrimination Ombud

Section 4. The organisation of the Ombud

The Equality and Anti-Discrimination Ombud is appointed by the King in Council for a fixed term of six years without the possibility of reappointment. The Ombud is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may issue instructions to the Ombud regarding the Ombud's professional activities.

Section 5. The tasks of the Ombud

The Ombud shall work to promote genuine equality and prevent discrimination in all sectors of society on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression or age. The Ombud shall also work to promote equal treatment in the context of employment, irrespective of political views and labour organisation membership. The Ombud shall provide guidance on the provisions specified in section 1, second paragraph. Any person may contact the Ombud for guidance. The Ombud shall monitor that Norwegian law and administrative practice are in accordance with Norway's obligations under: a) The United Nations International Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979. b) The United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965. c) The United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006.

Chapter 3. The Anti-Discrimination Tribunal

Section 6. The organisation of the Tribunal

The Tribunal is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may issue instructions to the Tribunal regarding the Tribunal's professional activities. The Tribunal shall be divided into three divisions. The Tribunal shall consist of three chairpersons and six other members. There shall also be six deputy members. The Tribunal chairpersons participate in their respective divisions. A chairperson shall be appointed as the administrative leader. The Tribunal chairpersons shall fulfil the requirements prescribed for judges in section 53, first paragraph, and section 54, second paragraph, of the Courts of Justice Act. The Tribunal chairpersons shall have prior judicial experience unless other particular qualifications indicate that such experience is not required. Members and deputy members shall be appointed by the King for a term of four years, with the possibility of reappointment for one additional term. When the members and deputy members are appointed for the first time, half of them shall be appointed for a term of two years. Employees of the Ombud and the Ministry may not be appointed as members of the Tribunal. Cases processed by the Tribunal are prepared by a secretariat. The head of the secretariat is employed by the Ministry.

Section 7. The areas of responsibility of the Tribunal

The Tribunal shall enforce the provisions specified in section 1, second paragraph, with the exception of the following provisions of the Equality and Anti-Discrimination Act: a) section 13, first paragraph, on sexual harassment b) section 18 on universal design of ICT c) section 24 on the duty of public authorities to promote equality d) section 25 on the duty of employer and employee organisations to promote equality e) section 26 on the duty of employers to promote equality f) section 28 on the gender balance of official committees, etc. g) section 32, second paragraph, on the processing of information on pay h) section 39 on penalties for aggravated contravention of prohibitions against discrimination by several persons acting together The Tribunal shall not enforce the prohibition against discrimination in family life and other purely personal circumstances pursuant to the Equality and Anti-Discrimination Act. 0 Amended by Act 19 December 2017 No. 114 (in force 1 January 2018).

Section 8. Processing of cases by the Tribunal

The Tribunal processes the cases submitted to it. A party, the Ombud or other persons with legal standing may submit a case to the Tribunal. The Tribunal shall not represent a party in external proceedings.

Section 9. Written and oral proceedings

The proceedings of the Tribunal are conducted in writing. The Tribunal shall consider whether an oral hearing should nevertheless be held for the purpose of elucidating the case. A decision to hold an oral hearing may be made by a Tribunal chairperson. In cases where a claim for redress has been made, the parties are entitled to an oral hearing.

Section 10. Dismissal and closing of cases

The Tribunal shall dismiss a case which has been decided by a court or been brought before a court for adjudication. The Tribunal shall also dismiss a case if the conditions for processing the case are not met. The Tribunal may dismiss a case if the matter is more than three years old. The Tribunal may close a case if the matter is trivial in nature, the subject matter of the complaint is obviously not contrary to the provisions specified in section 1, second paragraph, or the submitted evidence fails to elucidate the case sufficiently. Reasons shall be given for any decision to close a case. Administrative decisions and decisions pursuant to the first and second paragraphs may be made by a Tribunal chairperson.

Section 11. Authority to make administrative decisions.

Orders to stop, remedy, etc. Unless otherwise provided, the Tribunal may make an administrative decision if the provisions specified in section 1, second paragraph, have been breached. Subject to the exceptions specified in sections 14 and 15, the Tribunal may order the stoppage or remediation of an act or other measures necessary to secure the cessation of discrimination, harassment, instructions or retaliation, and to prevent repetition. The Tribunal may set a deadline for compliance with the order. In cases where a delay pending the Tribunal's processing of the case is expected to entail inconvenience or harm, an administrative decision pursuant to the second paragraph may be made by a Tribunal chairperson.

Section 12. Redress and compensation

The Tribunal may make an administrative decision concerning redress in the context of an employment relationship and in connection with an employer's selection and treatment of self-employed persons and hired workers; see section 38, second paragraph, first sentence, of the Equality and Anti-Discrimination Act, section 13-9 of the Working Environment Act and section 10-9 of the Ship Labour Act. The Tribunal may make a unanimous administrative decision concerning compensation in connection with breach of the provisions specified in section 1, second paragraph, if the only submissions made by the respondent relate to inability to pay or other manifestly untenable objections.

Section 13. Coercive fines

The Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of an order issued pursuant to section 11 if the deadline for complying with the order is breached. The coercive fine shall take the form of a lump-sum coercive fine or an accruing daily fine. The coercive fine begins to run if the deadline for complying with the order is breached, and shall normally run until the order has been complied with. A decision to impose

a coercive fine may be made by a Tribunal chairperson. A party may apply for review of a decision to impose a coercive fine. Sections 28 to 36 of the Public Administration Act apply correspondingly. The Tribunal may reduce or waive an imposed coercive fine when indicated by special reasons. Coercive fines are payable to the State, and are collected by the Norwegian National Collection Agency. The Ministry may issue regulations containing rules on the size and duration of coercive fines, as well as other provisions on setting and implementation.

Section 14. The authority of the Tribunal relative to other public administrative agencies

The Tribunal may not make an administrative decision establishing that an administrative decision of another public administrative agency breaches provisions specified in section 1, second paragraph. However, this does not apply to individual administrative decisions made by public administrative agencies in the performance of their employer functions. Under no circumstances may the Tribunal make administrative decisions relating to the King or ministries. In cases specified in the first paragraph, the Tribunal may issue a statement as to whether the matter submitted to the Tribunal breaches the provisions specified in section 1, second paragraph. However, this does not apply to cases concerning the appointment of judges by the King in Council.

Section 15. The Tribunal's relationship with the Labour Court

If a case before the Tribunal indirectly raises a question about the existence, validity or interpretation of a collective wage agreement, any party to the wage agreement may have this question decided by the Labour Court. The Tribunal may issue a statement as to whether a collective wage agreement or a provision in a collective wage agreement that has been submitted to the Tribunal breaches the provisions specified in section 1, second paragraph. In such cases, the parties to the collective wage agreement may submit the question of the agreement's relationship with a provision specified in section 1, second paragraph, to the Labour Court. Cases before the Tribunal that are brought before the Labour Court pursuant to the first paragraph or the second paragraph, second sentence, shall be suspended until the Labour Court has finished dealing with the question. Under no circumstance may the Tribunal make decisions which fall within the jurisdiction of the Labour Court pursuant to the Act of 27 January 2012 No. 9 relating to labour disputes and the Act of 18 July 1958 No. 2 relating to public service disputes.

Section 16. Court proceedings

Administrative decisions and decisions concerning the imposition of a coercive fine made by the Tribunal may be submitted to the courts for comprehensive review. Proceedings concerning review of an administrative decision or decision concerning the imposition of a coercive fine made by the Tribunal must be brought within three months of the time the parties are notified of the Tribunal's administrative decision or decision. If proceedings are not brought by the deadline, an administrative decision takes effect as a legally binding judgment, and may be enforced pursuant to the rules applicable to judgments. The Tribunal may grant reinstatement following breach of the deadline in the second sentence pursuant to the rules in sections 16-12 to 16-14 of the Dispute Act. Administrative decisions concerning reinstatement may be submitted to the district court. Proceedings concerning the validity of an administrative decision or decision by the Tribunal shall be addressed to the State, represented by the Tribunal, and be brought before Oslo District Court; see section 44(4), first sentence, of the Dispute Act. The same applies to the lawfulness of circumstances linked to the imposition of a coercive fine pursuant to section 13.

Section 17. Relationship with the ordinary courts

As long as a case is being processed by the Tribunal, the parties to the case may not submit it to the district court. The Tribunal is deemed to be processing the case as of the date it receives the complaint. If proceedings are brought before the district court and a party wishes to have the case decided by the Tribunal, the court may suspend further proceedings on the application of the party. Section 16-15, section 16-18(3) and (4) and section 16-19 of the Dispute Act apply correspondingly. When deciding whether the case should be suspended, the court shall

emphasise whether it is reasonable to suspend the case pending the Tribunal's decision, given the time the parties will spend and the costs they will incur in connection with suspension. The case may be re-started before the district court on the application of either party, but not before an administrative decision has been made, and no later than one month after the administrative decision has been pronounced.

Section 18. Penalty for contravention of an order and breach of disclosure duty

A penalty of a fine shall be imposed on any person who intentionally or negligently fails to comply with an order pursuant to section 11 or to comply with the disclosure duty pursuant to section 3. Contravention by a person in a subordinate position shall not be penalised if such contravention is essentially due to the subordinate relationship.

Section 19. Prosecution

Contravention of section 18 shall only be prosecuted when so requested by the Tribunal, unless public prosecution is required in the public interest. In connection with such criminal proceedings, the prosecuting authority may request a judgment establishing measures to ensure cessation of the unlawful act, omission or retaliation, and to prevent repetition.

D –Norwegian Public Limited Liability Companies Act

§ 6-11a. Requirement regarding the representation of both sexes on the board of directors

(1) On the board of directors of public limited liability companies, both sexes shall be represented in the following manner:

1. If the board of directors has two or three members, both sexes shall be represented.
2. If the board of directors has four or five members, each sex shall be represented by at least two members.
3. If the board of directors has six to eight members, each sex shall be represented by at least three members.
4. If the board of directors has nine members, each sex shall be represented by at least four members, and if the board of directors has more members, each sex shall represent at least 40 percent of the members of the board.
5. The rules in no. 1 to 4 apply correspondingly for elections of deputy members of the board of directors.

(2) The first paragraph does not apply to members of the board of directors who have been elected among the employees pursuant to § 6-4 or § 6-37 first paragraph. When two or more members of the board of directors as mentioned in the first paragraph are elected, both sexes shall be represented. The same applies to deputy directors. The provisions in the second and third sentence do not apply if one of the sexes is represented by less than 20 percent of the total number of employees in the company at the time of election.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

40. In its Recommendation Rec(1985)2 on legal protection against sex discrimination, the Committee of Ministers exhorts member states to take or reinforce measures for the promotion of equality between women and men, including through legislation in the field of employment, social security and pensions, taxation, civil law, the acquisition and loss of nationality and political rights. In its Recommendation Rec(1996)51 on reconciling work and family life the Committee of Ministers further calls on member states to take action to enable women and men to better reconcile their working and family lives. In its Recommendation Rec(1998)14 on gender mainstreaming, the Committee sets out the conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.

41. 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)

42. 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.

43. 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.

44. 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.

45. 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)

46. 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."

47. 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

48. 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.”

49. 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.

50. 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

51. 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

52. 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)¹³; 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

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

54. 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:

55. 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

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

57. 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.”

58. 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. [...]”

59. 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

60. Directive 2006/54/EC (the Equal Pay directive), 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."

61. 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).

62. 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.

63. 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

64. 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 Gothenburg Social Summit for fair jobs and growth.

65. 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.”

66. 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

67. 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

68. 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.

69. 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 Jenkins, paragraph 22); C-237/85 Rummler, paragraph 11; C-17/05 Cadman, paragraphs 27-29).

70. 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 C-96/80 Jenkins, paragraphs 14 and 15; C-285/02 Elsner-Lakeberg, paragraph 12; C-17/05 Cadman, paragraph 30).

71. 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 Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93 Royal Copenhagen) or pay provided on a voluntary basis (C-457/93 Lewark). 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 (C-320/00 Lawrence, paragraph 18; C-256/01 Allonby).

72. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, C-262/88 Barber, EU:C:1990:209, paragraph 12; C-170/84 Bilka-Kaufhaus, EU:C:1986:204, paragraph 15; C-167/97 Seymour-Smith, EU:C:1999:60, C-12/81 Garland, C-381/99 Brunnhofer, 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 (C-324/93 Gillespie, EU:C:1996:46, paragraph 13; C-360/90 Bötzel, EU:C:1992:246, paragraph 15; 171/88 Rinner-Kuhn). The concept of pay does not include statutory social security benefits (C-80/70 Defrenne, EU:C:1971:55, paragraph 7).

73. 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 C-129/79 *Macarthys Ltd*, EU:C:1980:103 paragraph 11, and C-237/85 *Rummier*, paragraphs 13 and 23, C-381/99 *Brunnhofer*, paragraph 42). In order to determine whether the work being done by different persons is the same, it is necessary to ascertain whether, taking consideration 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*, paragraphs 32 and 33).

74. 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*, paragraph 13).

75. 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*, EU:C:1989:383, paragraph 22).

76. 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*, UE:C:1993:335, paragraph 22, and C-460/06 *Paquay*, 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, C-14/83 *von Colson and Kamann*, UE:C:1984:153, paragraphs 23 and 24; C-180/95 *Draehmpaehl*, EU:C:1997:208, paragraph 25; and C-460/06 *Paquay*, EU:C:2007:601, paragraph 45).

77. 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*, paragraph 53).

78. 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, paragraph 26, C-460/06 Paquay, paragraph 46 and C-407/14 Camacho, paragraph 33).

79. 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-326/96 Levez, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

80. 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.

81. 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)).

82. 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.

83. 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).

84. 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.

85. 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 promote a balanced representation of women in decision-making positions.

86. 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 the supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality).

87. 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).

88. 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 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.

89. 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

90. 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

91. 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

92. According to UWE, the fact that a set of legal documents (constitution, laws, etc.) prohibit all gender discrimination and provide that equal treatment must be ensured in practice, does not mean that the relevant provisions are actually implemented. UWE argues that the information provided by the Government is mostly of a general nature and 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.

Effective remedies

93. UWE refers to the country report on non-Discrimination regarding Norway of the European Network of Legal Experts in Gender Equality and Non-Discrimination (2017)

according to which, despite the number of laws, compensation for violation of the principle of equal pay has been awarded in only four lower court cases, out of which only one was on equal pay.

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

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

Pay transparency and job comparisons

96. UWE claims that the Government neither explains the component elements or characteristics of job classifications, nor the pay gap calculation method for firms. According to UWE, the Government refers to the encouragement to negotiate classifications, but not a requirement to establish them.

97. UWE alleges that examples of indirect discrimination bias have been identified in job assessment and classification methods. However, nothing has been done to take account of them effectively in policies, in terms of criteria employed to assess jobs and the application of these criteria in the weighting and ranking of jobs. According to UWE, there appears to be a lack of occupational categories with clearly defined classification criteria and the pitfalls have not yet been properly addressed. UWE considers that this issue should not just be dealt with through collective bargaining but clearly also by States.

Equality bodies and other institutions

98. According to UWE, the system of the Equality Ombudsman and the Equality Tribunal has some importance with regard to equality and discrimination. Bringing cases also seems to be easy. The recommendations issued are examined by the Equality Tribunal in the event of disagreement. But neither the Ombudsman nor the Equality Tribunal can award damages or compensation. If no friendly settlement is reached, the employee concerned can bring proceedings in the competent ordinary courts. The Ombudsman also has an educational role in terms of disseminating information and engaging in dialogue with the various stakeholders in a country with a long tradition of such dialogue.

99. As regards the Labour Inspectorate, it is a government agency responsible for ensuring that companies comply with the Working Environment Act. With numerous

experts noting difficulties in terms of equal pay for equal work, according to UWE, in Norway the situation is far from being compliant with the requirements of the Social Charter.

2. The respondent Government

Recognition of the right to equal pay in legislation

100. The Government refers to the Gender Equality Act of 2013, which provides in its Section 21 that women and men are entitled to equal pay for work of equal value.

101. The Government further states that the new Equality and Anti-Discrimination Act and a parallel Equality and Anti-Discrimination Ombud Act came into force in 2018. The Equality and Anti-Discrimination Act replaced the Gender Equality Act of 2013. A central feature of these acts is strengthening the active equality efforts in work life.

102. As regards the recognition of the right to equal pay in legislation, Section 34 of the Equality and Anti-Discrimination Act provides that women and men in the same undertaking shall receive equal pay for the same work or work of equal value. Whether the work is of equal value is determined by means of an overall assessment in which emphasis is given to the expertise that is required to perform the work and other relevant factors, such as effort, responsibility and working conditions. Pay is defined as ordinary remuneration for work plus all other supplements, advantages and other benefits.

Effective remedies

103. According to the Government, the law provides for appropriate and effective remedies in the event of wage discrimination. As regards the burden of proof, the Government refers to Section 13-8 of the Working Environment Act, according to which if the employee or job applicant submits information that gives reason to believe that discrimination has taken place the employer must substantiate that such discrimination or retaliation has not occurred. As regards compensation, Section 13-9 provides that anyone who has been discriminated against may claim compensation without regard to the fault of the employer. The compensation shall be fixed at the amount the court deems reasonable in view of the circumstances of the parties and other facts of the case.

104. Furthermore, Section 37 of the Equality and Anti-Discrimination Act provides discrimination shall be assumed to have occurred if circumstances apply that provide grounds for believing that discrimination has occurred and the person responsible fails to substantiate that discrimination did not in fact occur. As regards compensation and damages, according to Section 38 a victim of discrimination may claim compensation and damages. Damages shall cover economic losses resulting from the unlawful treatment. Compensation for non-economic loss shall be set in an amount that is reasonable in view of the nature and scope of the harm, the relationship between the parties and the circumstances otherwise.

105. Moreover, according to Section 12 of the Equality and Anti-Discrimination Ombud Act, the Tribunal may make an administrative decision concerning redress in the context of an employment relationship.

Pay transparency and job comparisons

106. As regards pay transparency, according to the Government Section 34 of the Equality and Anti-Discrimination Act provides for the right to equal pay for work of equal value within the same company. Section 31 introduces new tools for achieving equal pay for equal work, by allowing a worker who suspects discrimination in the setting of pay to demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay of the person or persons with whom the worker is making a comparison.

107. As regards job comparisons, according to the Government, the wage comparison is limited to pay indifferences in the same undertaking. This means that the equal pay requirement cannot be based on comparisons between workers in different enterprises, even if the enterprises are operated and owned by the same physical or legal entity. In the public sector, the state and each individual municipality are regarded as single enterprises. The reasons for limiting the comparison to pay gaps within the same enterprise is that pay gaps between enterprises are often related to non-discriminatory factors, such as geographic location, size, current market situation and the companies wish to compete on quality of the workforce. Comparing pay between undertakings could make the assessment of wage discrimination complicated and inefficient.

Equality bodies and other institutions

108. The Government indicates that the equality and anti-discrimination legislation was enforced by the Equality and Anti-Discrimination Ombud until 1 January 2018. In 2017, the Ombud had 53 staff in full-time positions and five different departments with specific tasks, including the department for handling individual complaints. In 2017 the Equality and Anti-Discrimination Ombud decided 21 individual complaints and 702 requests for guidance in the field of gender discrimination. At least 8 individual complaints were decided on the topic of equal pay for equal work in 2016-2017. Before 1 January 2018 cases of discrimination handled by the Ombud could be appealed to the Equality and Anti-Discrimination Tribunal.

109. According to the Government, this system has been revised in 2017 by the adoption of the new Equality and Anti-Discrimination Act and a parallel Act of the Equality and Anti-Discrimination Ombud, which came into force on 1 January 2018. In

response to UWE's claim that equality bodies cannot award compensation, the Government states that these new acts have also given the new and reformed Equality and Anti-discrimination Tribunal the authority to grant redress and compensation to workers and coercive fines to employers for non-implementation of administrative decisions by the Tribunal.

110. The Equality of Anti-Discrimination Ombud has reduced the number of employees to 38 full-time positions, with a budget for 2018 of NOK 42,821,000. A new independent Anti-discrimination Tribunal has been created with 14 employees in the secretariat and 15 members of the Tribunal. The Tribunals budget for 2018 was NOK 18,598,000.

111. According to the Government, the Equality and Anti-Discrimination Ombud handles complaints about breaches of law, gives legal advice and provides information on legal rights and responsibilities - both to individuals and private and public authorities and private and public employers as well as employer/employee organisations. In addition, the Ombud acts as a proactive agent for equal opportunities in the labour market and other areas of society by pointing out discriminatory effects of policies and practices.

112. The Equality and Anti-Discrimination Tribunal enforces the new Equality and Anti-Discrimination Act and considers appeals against the statements and decisions made by the Equality and Anti-Discrimination Ombud. Consideration by the Tribunal is free of charge. The Tribunal only considers cases that first have been considered by the Ombud. The Tribunal's decisions are administratively binding but may be overruled by a court of law.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

113. 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.

114. 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.

115. 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.

116. 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).

117. As regards Norway, the Committee notes from the submissions of the Government that the principle of equal pay for equal work or work of equal value was implemented in the Gender Equality Act Sections 21 and 5 and in the Working Environment Act Section 13-2, 1, paragraph c. As regards the new legislation, Section 34 of the Equality and Anti-Discrimination Act provides that women and men shall receive equal pay for the same work or work of equal value. The Committee notes that the right of equal pay has been guaranteed in legislation both under the Gender Equality Act of 2013 as well as the new Equality and Anti-Discrimination Act from 2018.

118. In view of the above, the Committee considers that the obligation to recognise the right to equal pay for work of equal value in the legislation has been satisfied.

Effective remedies

119. 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.

120. 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.

121. 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).

122. 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.

123. As regards Norway, the Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Norway 2019 that access to the courts is ensured for alleged victims of gender discrimination. In practice few cases make it to the courts as most cases end with the Ombud/Tribunal system. Access to the courts is ensured for anyone. In practice, interest groups will be financially or practically supporting claims from individuals.

124. Legal aid is offered to individuals below a certain income level. In 2015, the rates for being eligible for free legal aid are NOK 246,000 for single households and NOK 369,000 for spouses/co-habitants.

125. The Committee further notes that domestic law permits a shift of the burden of proof from the complainant to the respondent. In all discrimination cases, if there are circumstances that give “reason to believe” that there has been direct or indirect differential treatment in contravention of the law, such differential treatment shall be assumed to have taken place unless the person responsible proves, on the balance of probabilities, that such differential treatment nevertheless did not take place. As regards compensation, the Committee notes that according to Section 38 of the Equality and Anti-Discrimination Act, damages shall cover pecuniary losses resulting from the unlawful treatment. Compensation for non-pecuniary loss shall be set in an amount that is reasonable in view of the nature and scope of the harm, the relationship between the parties and the circumstances otherwise.

126. The Committee also observes that according to Section 13 of the Equality and Anti-Discrimination Act, the Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of an order issued pursuant to Section 11 if the deadline for complying with the order is breached. The coercive fine shall take the form of a lump-sum or an accruing daily fine. The coercive fine begins to run if the deadline for complying with the order is breached and shall normally run until the order has been complied with.

127. The Committee notes that legislation provides for a shifting of the burden of proof and does not set a ceiling to compensation that can be awarded in pay discrimination cases.

128. In view of the above, the Committee considers that the obligation to ensure access to effective remedies has been satisfied.

Pay transparency and job comparisons

129. 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.

130. 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.

131. 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, jobclassification 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).

132. 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.

133. Moreover, domestic 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.

134. The Committee notes that Norwegian law addresses the issue of pay transparency. According to Section 32 of the Equality and Anti-Discrimination Act, an employee who suspects pay discrimination may demand that the employer provides information about the pay level and the criteria for defining the pay level for another employee with whom she/he is comparing herself/himself. The person who receives information about pay according to this provision has an obligation of secrecy and shall sign a statement of secrecy.

135. As regards the notion of equal work or work of equal value, the Committee notes that Section 21 of the Gender Equality Act establishes that whether or not the work/positions are of equal value is decided on the basis of an overall evaluation. For example, the need for the necessary competence/qualifications to perform the job is relevant as well as other relevant factors such as effort, responsibility and other working conditions. The parties can in principle raise all aspects/parameters that they deem to be relevant.

136. Furthermore, Section 34 of the Equality and Anti-Discrimination Act stipulates that whether the work is of equal value is determined by means of an overall assessment in which emphasis is on the qualifications and the expertise that are required to perform the work and other relevant factors, such as effort, responsibility and working conditions.

137. The Committee notes from the Direct Request concerning Convention 100 (2018) of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) that job classification it is not extensively used and that the Equal Pay Commission has concluded that it was not seen as a good strategy towards equal pay. In the context of equal pay cases lodged before the Equality and Anti-Discrimination Ombud, equal remuneration for work of equal value is ensured through an overall objective assessment of the work. Noting the persistence of the gender pay gap and the time lapse since the determination of the Equal Pay Commission, the CEACR expressed its hope that the Government, in cooperation with the social partners, would reconsider the appropriateness of using objective job evaluation methodologies to achieve equal pay.

138. According to the Government Section 34 of the Equality and Anti-Discrimination Act provides for the right to equal pay for work of equal value within the same company. Section 31 introduces new tools for achieving equal pay for equal work, allowing a worker who suspects discrimination in the setting of pay to demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay of the person or persons with whom the worker is making a comparison.

139. The Committee further notes that as regards the obligation of employers to promote equality, under Section 26 of the Equality and Anti-Discrimination Act, all public undertakings, regardless of their size, and private undertakings that ordinarily employ more than 50 workers shall investigate whether there is a risk of discrimination, analyse the causes of identified risks and implement measures suited to counteract discrimination and promote greater equality. Furthermore, the Committee notes that in the new Section 26a of the Equality and Anti-Discrimination Act, all employers are given a more concrete duty to issue a statement on equality measures implemented or planned to promote the Act's purpose of equality irrespective of gender.

140. As regards job comparisons, the Committee notes that in its submissions the Government states that these can only be made within the same company. In particular, the Government argues that the equal pay requirement cannot be based on comparisons between employees in different enterprises, even if the enterprises are operated and owned by the same physical or legal entity. In the public sector, the state and each individual municipality are regarded as single enterprises. The reasons for limiting the comparison to pay within the same enterprise is that pay differences between enterprises are often related to non-discriminatory factors, such as geographic location, size, current market situation and the companies wish to compete on quality of the workforce. According to the Government, comparing jobs and pay across companies could make the assessment of gender pay discrimination complicated and inefficient.

141. In this connection, the Committee notes that it has previously considered that the situation in Norway was not in conformity with the Charter as the possibility of job comparisons was limited to the same company (Conclusions 2014, Norway, Article 4§3).

142. The Committee considers that domestic law should not unduly restrict the scope of job comparisons. These comparisons should at least 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. Since in Norway job comparisons are limited to the same company, the obligation to enable such comparisons has not been satisfied.

Equality bodies and other institutions

143. 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.

144. 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.

145. 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.

146. 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.

147. The Committee notes from the European Network of Legal experts in gender equality and non-discrimination Country Report that in Norway the Equality Ombud has a dual role in working for equality by enforcing the law as well as generally promoting equality and combating discrimination. As a law enforcer, the Equality Ombud issues

opinions on complaints concerning breaches of statutes and provisions within the Ombud's sphere of activity and provides advice and guidance with regard to the legislation within its mandate. The Equality Ombud is funded by annual grants financed by the Ministry of Children, Equality and Social Inclusion, but cannot be instructed by the Ministry.

148. The Committee notes that the Equality Ombud plays a proactive role in promoting equality and combating discrimination, and monitors developments in society with a view to exposing and calling attention to matters that counteract equality and equal treatment. The Ombud raises awareness of equality and equal treatment and actively promote changes in attitudes and behaviour. The Ombud plays an active part in giving the general public information about status and challenges. The Ombud provides support and guidance in efforts to promote equality and counteract discrimination in the public, private and voluntary sectors. Furthermore, the Ombud helps to disseminate examples of good practices and to increase knowledge of methods for promoting ethnic diversity in working life.

149. The Committee further notes that a person who claims to be a victim of discrimination on any of the discrimination grounds covered by law may bring a complaint to the Equality Ombud, who will investigate the complaint by demanding information and documentation from the responsible party. The Ombud will provide counsel and guidance to the victim, but not independent assistance in the sense of being the victim's legal representative. The Ombud will undertake an assessment of whether or not discrimination has occurred if the victim brings a complaint forward. The work of the Equality Ombud is based on written statements, and on the principle of the adversarial procedure between the parties involved in the case, in which each party is allowed to hear the arguments of the other party and be given opportunity to refute the information. The Ombud may, in addition to handling complaints, take up cases on her own initiative or based on an application from other persons. "Anyone" may bring a case before the Ombud. Trade unions, NGOs or other similar bodies are regarded as being "anyone". These parties may also file claims in class actions. The Committee notes that there is no specific information about equal pay cases.

150. The Committee notes that the Equality Ombud and the Equality Tribunal are quasi-judicial institutions. The decision of the Equality Ombud is not a legally binding administrative decision but is a statement as to how the Ombud evaluates the case in relation to the relevant discrimination legislation. However, a party which is not satisfied with the Ombud's statement may appeal to the Equality Tribunal. Consideration by the Tribunal is free of charge. It only considers cases that first have been considered by the Ombud. The Tribunal's decisions are administratively binding but may be overruled by a court of law. The Equality Tribunal has (as of 1 January 2018) the right to award redress and financial compensation. Section 12 of the Equality and Anti-Discrimination Ombud Act provides that the Tribunal may make an administrative decision concerning redress in the context of an employment relationship.

151. The Ombud and the Tribunal may not bring cases before the courts. However, their powers of investigation are wide. Public authorities are under an obligation to provide all necessary information so that these bodies can fulfil their obligation to ensure the application of the discrimination legislation. The obligation of the public authorities to provide information overrides their obligation of secrecy. Both the Ombud and the Tribunal are entitled to make the necessary investigations to fulfil their obligations in ensuring the Act's fulfilment. If necessary, they may also require assistance from the police, and an evidence meeting at the courts may be ordered.

152. In view 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

153. Firstly, the Committee considers that the right to equal pay for equal work or work of equal value is recognised in legislation.

154. Secondly, the Committee considers that the obligation to provide effective and appropriate remedies has been satisfied.

155. Thirdly, as regards the obligation to enable job comparisons, the Committee notes that in Norway, job comparisons are limited to the same enterprise. Therefore, the obligation to enable such comparisons has not been satisfied.

156. Finally, the Committee considers that the obligation to maintain effective equalities bodies has been satisfied.

157. The Committee holds that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that job comparisons are limited to the same enterprise.

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

158. 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

159. According to UWE, the Government submissions include only very few relevant and reliable figures. UWE believes that where the respondent state makes choices so that one or other criterion is included in its statistics and others are excluded, it is an attempt to conceal greater wage inequality than it admits. UWE contends that the Governments must provide relevant statistical data, and they must compare the actual situation with the requirements to be achieved, the resources used and the results obtained.

160. UWE considers that to assess the reality of the pay gap, which is less favourable than the Government maintains, it must be corrected or refined with other indicators and data. The Government's indicators do not show the wage inequalities relating to the fact that women are much more likely to be confined to part-time work than men, nor the fact that women are under-represented in the most senior posts. Besides, UWE asserts that data presented by the Government do not make a distinction between the public and private sectors. According to UWE, in February 2017, the gender pay gap stood at 41.2%, the gender hours gap at 46.1% and the gender employment rate gap at 12.7 %.

161. Moreover, according to UWE, the Government itself acknowledges the existence of this pay gap.

162. UWE considers that there is no sign of gender mainstreaming in the policies concerned, decision-making, access to resources, procedures and practices, methodology, implementation, monitoring or evaluation. UWE claims that given the inadequacy of the conventional tools for combatting discrimination and the protection of victims, the Government has failed to take appropriate measures, in particular with regard to the employment equality policy, protection against discrimination, lack of supervision and evaluation.

163. UWE states that many aspects are not yet sufficiently taken into account, for instance, the courses of study chosen by women, which all too often are non-scientific and unambitious, the greater number of vocational training courses of a higher standard available for men, the large number of benefits in kind for men and the small number for women, horizontal and vertical segregation in employment, the centuries-old division of roles in the family, with no economic value being attached to the time spent on housework, forced part-time working, and failure to ensure a proper work-life balance.

164. UWE contends that even if Norway has one of the highest percentage of women in the workforce in the industrialised world, its labour market is one of the most gender-segregated and to the extent that any progress is being made, it is being made by girls who are making unconventional choices. This is because it pays for girls to choose

male-dominated occupations, while the same is not true for boys who choose female-dominated occupations.

165. According to UWE, the employment equality policy is not fully effective. It is disparate in nature and refers to negotiation at company level. It is also inconsistent. The various bodies are not provided with basic training in gender mainstreaming to enable them to implement internal plans or measures. There is no general framework and the respondent state must therefore introduce one in order to bring about an overall change that is needed to eradicate inequality and discrimination.

2. The respondent Government

166. As regards the pay gap between men and women, the Government indicates that in 2016 the average monthly wage for full-time female workers in Norway was 87.6% of that for men. If part-time female workers are included, the average wage for women accounted for 86.1% of that for men.

167. According to the Government, based on research by CORE the differences in pay are closely related to gender-segregated structures in the labour market. If adjusted for occupation, industry and sector, length of education and age, women's hourly pay is 93.5% of what men earn. The remaining gap of 6.5% is unexplained, but this does not, according to the Government, necessarily reflect discrimination.

168. The CORE has also investigated the effect of having children on hourly pay differences. The indicator shows that the pay gap is widest at the top of the salary ladder. While hourly pay for women in low-income professions is 6% lower than that of men in equivalent positions, women atop the salary ladder earn 20% less than top salaried men. The analysis shows that women with children earn less than women without children, while for men the opposite is the case. Over time (2002-2011) one can see the gap closing between women with and without children, while the difference between fathers and childless men is increasing. Mothers have not moved closer to fathers in terms of hourly pay.

169. According to the Government, based on the statistics developed by CORE Norway is among the countries in the world with least differences in employment between women and men. The difference was historically low in 2016, at only 5 percentage points. The proportion of employed men aged 26-66 years was 81% in 2016; the equivalent for women was 76 %.

170. The Government further indicates that the statistical indicators that UWE provides, referring to a 41.2% of the gender pay gap in Norway are not indicative of the actual gender pay gap as they are largely due to the fact that more women work part-time than men, and most of them do it voluntarily. The Government instead refers

to Eurostat figures, according to which the pay gap is 14.9%. The updated numbers of register-based wage statistics for Norway 2017 show that the average wage for women accounted for 86.7% of that of men. The numbers include part-time (adjusted to full time equivalents). These figures show that the gender pay gap is significantly less when one compares data on a detailed level and is more prominent in the private than in the public sector. In some vocations women earn more than men.

171. The Government dismisses the allegation of UWE that women are forced to work part-time and refers to the Labour Force Survey 2017, according to which 9% of women in part-time positions and 3% of all women in the work force wanted to increase the number of hours worked in their position. According to the Government, the rest work part time voluntarily.

172. According to the Government, wage formation in Norway is not the responsibility of the Government. The social partners are responsible for conducting wage negotiations. The authorities only act as legislator and facilitator. In addition, both central and local governments are employers.

173. The authorities facilitate wage negotiations by, inter alia, inviting the social partner organisations to participate in meetings in the Contact Committee and the authorities also take part in the Norwegian Technical Calculation Committee for Wage Settlements. This arrangement helps the authorities and the social partners reach a common understanding of the current situation and trends in the Norwegian economy. The Technical Calculation Committee for Wage Settlements prepares documentation on trends in prices and wages, including wage trends for women and men. A report is published annually. Agreements on wage increases are established through negotiations between the employee and employer organisations as well as through local and individual negotiations.

174. According to the Government, all the social partners are highly aware of the need to eliminate the wage differences between women and men. Efforts to reduce wage differences are pursued mainly through wage negotiations. In addition, the Government contributes through cooperation on documentation and research between the social partner organisations and the authorities, through political dialogue between the authorities and the organisations. This issue is discussed in the Council for Working Life and Pensions Policy, where the social partners and the Government regularly meet. Furthermore, a working group on equality in working life has been created, in which relevant ministries and social partner umbrella organisations will follow up this and other issues. The Government and the social partners have recently initiated a project to examine the Icelandic legal framework for equal pay, to develop further knowledge on the matter.

175. In the State Ownership Report 2016, relevant topics in the ownership dialogue related to corporate governance are listed. One of the issues is whether the company has a strategy or established separate measures or goals to improve gender balance among managers. This is followed up in the ownership dialogue.

176. The Government indicates that it will also contribute to reducing gender segregated labour market by encouraging girls to choose science subjects at all levels and has therefore increased the amount of funding allocated to the *Jenter og teknologi* (Girls and Technology) project by NOK 0.5 million to a total of NOK 2.5 million in 2017.

177. The Ministry of Labour and Social Affairs has initiated a study in order to examine the degree of gender segregation in the Norwegian labour market since the beginning of the 1990s. The Ministry of Labour and Social Affairs has also initiated a study on collective agreements, wage growth and wage dispersion. The project aim is to study how different bargaining regimes and union agreements affect wage growth and wage dispersion among different groups, included men and women.

178. The Ministry of Trade, Industry and Fisheries has initiated a study in order to examine the differences in the proportion of women in management positions in four sectors: business, academia, public sector, and in civil society organizations and their social partners.

179. Finally, the Government states that there is a strong commitment in Norwegian society towards women's rights and equal pay for equal work. For example, the proportion of people who wants full equality between women and men has increased significantly in recent years. In 2005, 44 % believed that it was important to have "full equality", meaning that a family should be a family where the two parties have equally demanding jobs and where housework and child care should be shared equally. The corresponding share had increased to 75% in 2016.

B – Assessment of the Committee

a) Key figures as regards equal pay in Norway

180. The Committee notes from Eurostat that the unadjusted gender pay gap in 2017 was 14.3% having decreased from 14.9% in 2016 and 16.2% in 2015. By comparison the corresponding figure in 2010 was 16.1%. The EU-28 average was 16% in 2017 down from 17.1% in 2010. The gender overall earnings gap stood at 31.5% in 2014. The adjusted or "unexplained" gender pay gap is relatively low at 8.3% 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

181. 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.

182. 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).

183. 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.

184. 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).

185. 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 Rec(1998)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).

186. 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.

187. 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.

188. As regards measures taken to reduce the gender pay gap in Norway, the Committee notes from the Concluding observations of the Human Rights Committee (2018) that a significant pay gap between men and women persists. While noting the information provided by the Government, including that the new Equality and Anti-Discrimination Act provides stronger protection against discrimination for pregnant women, the Human Rights Committee is concerned about reports that women with children earn less than men with children.

189. The Committee also notes from the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on the ninth periodic report of Norway that the pay gap in a horizontally and vertically gender-segregated employment market has only slightly narrowed, the hourly pay rate of women on average amounts to 88% of that of men, and the gap increases as the level

of education rises. CEDAW recommends the State party to continue to take the necessary measures, including implementing Section 34 of the new Equality and Anti-Discrimination Act, and establish a structure to monitor collective bargaining agreements to ensure that they are not gender discriminatory in order to narrow and close the pay gap between women and men.

190. The Committee considers that as regards the obligation to adopt measures to promote the right to equal pay for work of equal or comparable value, the Government collects reliable statistics and assessing the extent and causes of the persistent gender pay gap. The CORE has conducted extensive research and has stimulated research activity regarding the topic. To address the remaining challenges, the Government has raised the awareness of all social partners about the problem, so that they consider equality issues in collective agreements and when negotiating wages. The Government has also involved its ministries in further research regarding the issue. However, despite the measures implemented in this respect, no other significant initiatives and measures have been adopted to promote equal opportunities through gender mainstreaming. In the course of a seven-year period, the gender pay gap has not been significantly reduced (from 16.1% in 2010 to 14.3% in 2017) and hence there has been no measurable progress.

191. The Committee considers that some attention has been devoted to devising policies and measures in response to the findings of the research conducted by the CORE regarding the gender pay gap. However, despite the measures taken to remove inequality as well as to address societal stereotypes, and despite the fact that the gender pay gap is on a downward trend, initiatives undertaken and measures adopted by the Government do not reveal any major and coordinated effort to promote equal opportunities. Furthermore, the gender pay gap remains high and the progress achieved in reducing it, in the last decade, has definitely been slow and not significant. Therefore, the Committee considers that the obligation to achieve measurable progress has not been satisfied.

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

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

193. 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

194. According to UWE, Norway has managed to achieve a figure of 35.5% of women on the boards of listed companies because of a quota of 40% imposed by law in 2006. As often in all decision-making bodies, there are few women who are CEOs or executive or supervisory board members. The equal representation of women in decision-making is vital in order at last to bring about equal pay for women and men for equal, similar or comparable work.

195. UWE asserts that company managers and political leaders do not spontaneously make way for women and do not very readily respect the principle of gender equality. Men share power among themselves.

196. According to UWE, at issue here is access by women to positions of responsibility and the promotion of genuine equality in the occupation of those posts, as well as the elimination of pay gaps for the individuals concerned, as new female board members are less well paid than their male colleagues. It is not possible to determine the extent to which the relevant strategies are conclusive or achieve the desired objectives in reasonable proportions and within short timeframes.

197. According to UWE, the Norwegian submissions simply repeat that the 40% quota for the under-represented sex applies only to listed companies.

2. The respondent Government

198. According to the Government, the Labour Force Survey 2016 compiled by the Government funded "Statistics Norway", Norway has seen a substantial increase in the number of female leaders over the past 15 years, both in the public and private sectors. In 2016 the proportion of employed women who are leaders was 38%. Gender distribution among managers varies between the different sectors. In the private sector, 70% of the leaders are men; in the municipal sector, 60% of the leaders are women; while in the government sector, 56% of the leaders are women. An important issue is that more women than men are working in the public sector and more men than women are working in the private sector.

199. To keep track of the gender balance in the largest Norwegian companies the CORE has established the *CORE Norwegian Gender Balance Scorecard*. This scorecard shows major gender imbalances in the 200 largest companies in Norway: 80% of senior executives are men, and 93% of top executives (CEOs) are also men. The scorecard also sheds light on the types of positions held by female and male senior executives - indicating clearly that gender imbalance in "line positions" should be the focus of attention. Women hold only 15% of line positions, i.e. positions with profit-and-loss responsibility and positions traditionally seen as important in qualifying for the top job as CEO.

200. Norway imposed a mandatory quote of 40% female board members of listed companies in legislation in 2006. According to the Government, analysis also shows that regulating corporate board gender balance by legislation has had a clear impact on gender balance in the boards covered by the law, but to date there is no evidence of a spill-over effect on senior operational management teams in the companies.

201. Key figures on gender distribution on boards and in executive management in companies where the State has an ownership interest is reported yearly in the *State Ownership Report*. As of March 2017, the proportion of women on boards was 46% and the proportion of female chairs was 44%. At the end of 2016 gender distribution in group management / the company's management group was 64% and 36%, and gender distribution among CEOs was 26% women and 74% men.

202. The Government refers to a study that investigates whether the gender gap in management can be explained by cohort effects rather than by opportunities and choices over the life-course. If the gender gap were driven by differences across cohorts, the researchers would expect it to diminish over time, but if the career effect prevails, they would expect the gender gap to increase as the younger cohorts grow older. The results confirm that the gender gap in leadership primarily relates to gender differences throughout working life. The main explanation for gender gaps in management is that the likelihood of being a leader increases more with age for men than for women.

203. The Government further states that researchers at the "Institute for Social Research" in Oslo found that female and male top managers had different prerequisites for being able to prioritise work and career. Female top managers generally have a spouse/partner who works full time. Male top managers often have a partner who works part-time or stays at home. In addition, the partners of male top managers who have full time jobs work much less than the partners of female top managers.

204. When it comes to attitudes, Norwegian business managers are generally very gender equality-oriented. However, it is typical for a male top manager to have a partner/spouse who does most of the work at home. In contrast, it is typical for a female top manager with a partner/spouse to share work equally. Male top managers report that their partner's efforts at home are most important. However, female top managers report that their own efforts at home are most important.

B – Assessment of the Committee

205. 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).

206. 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%.

207. 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.

208. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination Country Report: Norway, 2018 that rules applying to public limited liability companies were put into force by Norway on 1 January 2006. Similar rules are implemented in all the other company acts in instances where companies are subject

to partly public ownership. Private companies have no quota requirements as there are many small companies that are owned by one or three persons only and the boards are made up of only three persons.

209. According to the aforementioned report, the legislative technique of quotas, in the sense of demanding the representation of members of both gender, has been used successfully since 1981 when the rule was introduced in the Gender Equality Act of 9 June 1978 No. 45 regarding public boards and committees. This rule, in the Gender Equality Act, has been the model for the introduction of the requirement of a balanced gender representation on company boards in company legislation. The Committee notes that according to § 6-11a of the Public Limited Liability Companies Act each sex shall represent at least 40% of the members of the board of directors.

210. The Committee further notes that according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, the representation of women on decision-making boards of the largest listed companies stood at 41.2% in 2019 (the EU average stood at 27.9%). In 2018, this figure stood at 40.2% in Norway and 26.7% in the EU on average. The Committee observes that this indicator is considerably higher than the European average.

211. The Committee notes that the Government has taken measures to meet its positive obligation 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. Therefore, it considers that the obligation laid down by the Charter in this respect has been satisfied.

212. 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 13 votes to 2, that there is no violation of Articles 4§3 and 20.c of the Charter as regards access to effective remedies;
 - by 14 votes to 1, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that job comparisons are not enabled;
 - by 13 votes to 2, that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies;
- unanimously, that there is a violation of Article 20.c of the Charter on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- unanimously, that there 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.



Giuseppe PALMISANO
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary