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

11 April 2017

Case Document No. 3

University Women of Europe (UWE) v. Norway
Complaint No 135/2016

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

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 135 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

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Respondent: Norway

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 13 December 2016, the High Contracting Party, Norway, represented by Ms Hilde Ruus, Agent of the Government, Attorney-at-law, Office of the Attorney General (Civil Affairs), stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

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

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

1. On the relevance of the arguments presented in the complaint

Pursuant to Article 4 of the Protocol *“The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision”*.

The UWE is taken aback by the observations from Norway. The collective complaint, in terms of both law and practice, provides all the necessary evidence to prove a violation of the provisions relating to equal pay for equal work and the unsatisfactory action taken by the state in this area. Norway's remarks relate more to the merits than to admissibility.

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

The European Committee of Social Rights should take due note of this.

- **On paragraph 8 of the Norwegian observations:** Norway bases its request for the complaint to be declared inadmissible on the decision taken in collective complaint No. 28/2008 *Syndicat national des Dermato-Vénérologues v. France* concerning whether or not there was discriminatory treatment in connection with the fees charged by medical practitioners in private practice. However, the facts as presented by the UWE are such as to reach a conclusion that there has been a violation of the guaranteed right to equal pay for equal work between women and men. The articles with which Norway has failed to comply are specified in the collective complaint (page 10) and satisfy the requirements of

admissibility. This objection is therefore without substance. The UWE's complaint is admissible on this ground.

- **On paragraphs 9 and 10 of the Norwegian observations:** the facts described are specific and substantiated in the collective complaint. Numerous statistics and figures all show without any room for doubt that there is unequal pay for equal work between women and men in Norway, regardless of the source, analysis or institution which produced the statistics, including the data submitted by Norway itself in the reports it submits to the CEDAW Committee, the ILO or the ECSR.

The documentation submitted is specific, consistent, plentiful, comprehensive and relevant. Each document relates to the situation in Norway by means of comments which also point to this inequality. This inequality in this country has been assessed, furthermore, in external evaluations carried out by the CEDAW and the ILO:

- Collective complaint, pages 23 and 24: *“In its final observations of 23 March 2012, the CEDAW Committee expressed disappointment that not enough was being done to reduce the wage gap between women and men:*

“While noting the adoption by the Parliament of a white paper on equal pay in April 2011 to implement the recommendations of the 2008 Equal Pay Commission, the Committee remains concerned at the deep horizontal segregation in the area of employment and at the persistence of a wage gap, which is increasing as the level of education rises. The Committee notes that while unemployment rate in general is 2.2 per cent, it is 7.6 per cent among women with minority backgrounds and growing. It also notes the limitation placed by some institutional regulations regarding access of women to certain positions on the basis of their way of dressing, such as wearing a headscarf. The Committee is also concerned that 10 per cent of the women who work part-time do so involuntarily. In this regard, the Committee expresses concern that the State party overestimates the degree to which part-time employment is the result of women's choice. The Committee is also concerned at reports of discrimination against women on account of pregnancy and childbirth. The Committee is deeply concerned at the risk of indirect discrimination posed by the new pension system which replaced the calculation of pension based on the 20 best qualifying years of employment by basing it on all years that a person has worked. The Committee further expresses its concern that vocational training programmes for women belonging to minority groups do not lead to longer-term employment for these women and do not structurally improve the position of women belonging to minority groups in the labour market. The Committee also expresses its concern that the Norwegian Public Procurement Act does not contain specific measures in public procurement to promote gender equality” (Doc. 43, § 29, page 7).

The CEDAW Committee therefore urges Norway to: “a) Implement legislation guaranteeing equal pay for work of equal value, to narrow and close the wage gap between women and men in accordance with the International Labour Organisation Convention No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, and hasten the process of adopting the proposed legislation that will, along with other measures, provide for transparency in wages and mandate information provision from employers whenever discrimination is suspected” (Doc. 43, § 29, page 7)”.

- Collective complaint, pages 13 and 14: observations by the ILO in 2013: *“The Committee notes the observations made by the Norwegian Confederation of Trade Unions (LO), the Confederation of Unions for Professionals (Unio) and the Confederation of*

Norwegian Business and Industry (NHO), which were submitted with the Government's report. Gender pay gap. The Committee notes the extensive information in the Government's report.

Gender pay gap. The Committee notes the extensive information in the Government's report à on the measures taken to follow up on the recommendations made under the 2008 report of the Equal Pay Commission. It notes with interest the adoption of "Equality 2014", an action plan for gender equality (2011–14), which sets out a number of objectives, measures and indicators aimed at reducing gender-based pay differentials. The Committee notes, in particular, the measures envisaged to address the underlying causes of the gender pay gap, such as vertical and horizontal gender segregation in the labour market, high prevalence of women in involuntary part-time work and limited participation of women in top management positions in both the public and private sectors. Other measures are aimed at ensuring more information and transparency with respect to wages and wages differences. In this connection, the Committee notes the amendments to section 1(a) of the Gender Equality Act with regard to the obligation of employers to promote equality in relation to all aspects of employment, including remuneration and wage transparency. The Government also indicates that as a substantial part of the gender pay gap is linked to work-family responsibilities, a number of steps have been taken, including amendments to the Gender Equality Act and the Working Environment Act aimed at improving maternity benefits, paid parental leave, as well as the equal sharing of parental leave between mothers and fathers. The Committee notes further from the observations submitted by LO that, as a result of the confederation's involvement in the promotion of part-time workers' rights, changes to the Working Environment Act were adopted so as to ensure greater legal protection to this category of workers. The Committee requests the Government to continue to provide information on the practical implementation of the measures set out in the action plan to promote the principle of equal remuneration, to address gender segregation in the labour market and to narrow the gender pay gap, as well as on the role of the social partners in this process, and the results achieved. Please also provide information on the practical application of section 1(a) of the Gender Equality Act, as well as on any proactive measures taken or envisaged to strengthen the enforcement of the duty to promote gender equality at the enterprise level, including through training and awareness raising." (Doc. 50:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3143821,en (Doc. 50) .

These lines covering the information provided by the government itself and the Norwegian trade unions are ample proof of unequal pay.

We cannot see how the collective complaint falls short here, since the facts observed show persistent unequal pay and that the policies pursued are not effective. The government's argument that it cannot be held liable if no proper distinction is made between the private and public sector makes no sense. Norway has given a commitment to ensure this equality in all sectors. In practice, unequal pay and discrimination are a deep-rooted feature in matters regarding remuneration. And Norway, in terms of the tasks assigned to the monitoring bodies and the budgets allocated to them, fails to provide employees with the means to overcome this inequality. All these points relate to the merits, which Norway clearly does not want to see examined. The UWE's complaint is indeed admissible.

- **On paragraph 11 of the Norwegian observations:** This objection is contrary to the right to freely submit collective complaints. It is surprising and we would like to know on what text it is based. The European Social Charter was keen to move closer to civil society, become better known and respected through the system of collective complaints open to qualified INGOs, but clearly this is not Norway's view. Thorough research to find relevant international, European and national documentation made it possible to demonstrate this pay inequality in Norway. The complaints are independent of each other and each one is sufficient in itself. The UWE did not wish to choose just one country, since equal pay is not to be found in any of the fifteen states which have accepted the system of collective complaints. An attempt was made to harmonise the presentation of the complaints out of respect for the ECSR rapporteurs, providing a common basis in terms of the reasoning. And, as far as possible, the replies to the observations will also attempt to follow a harmonised reasoning, despite the tight deadline. This type of presentation shows the common points which are deep-rooted features of the countries concerned, but changes nothing in relation to the evidence put forward that this violation is to be found in each State Party. The evidence for this violation is clearly substantiated and demonstrated with information specific to Norway. There are other states that have taken the view that the UWE's complaint is admissible.

- **On paragraph 12 of the Norwegian observations:** it is claimed that the UWE has not cited the specific "Norwegian provision, national law or practice". This is somewhat strange because the collective complaint against Norway refers specifically not only to the national texts in force (complaint, page 16), the international texts signed and ratified by Norway (complaint, pages 14 and 15), but also to the equality monitoring bodies in Norway which lack effectiveness (complaint, pages 16 and 17). The texts are specifically referred to, and this objection is therefore without substance.

- **On paragraph 13 of the Norwegian observations:** This observation is barely comprehensible as the documentation submitted clearly shows the pay situation of women in Norway. The complaint provides detailed information on the Norwegian texts and their lack of effectiveness in practice. It also reveals the shortcomings of the policies pursued since there is a clear situation of unequal pay.

- **On paragraph 14 of the Norwegian observations:** Norway criticises the wealth of the documentation submitted and in so doing contradicts itself. Why should Norway, a progressive country, refuse to prove in a hearing on the merits, that there is pay equality between women and men for equal work? The answer is that it cannot. This objection cannot give rise to any finding of inadmissibility as the complaint provides considerable reasoning relating to the national situation.

- **On paragraph 15 of the Norwegian observations:** The complaint contains a wealth of documentation yet Norway complains of the portrayal of the situation of women associated with this inequality simply because this is the way things are for women. This is not a complaint in the abstract. Far from it, the inequality has been demonstrated. When a Norwegian woman, as has been shown, receives a lower salary than a man for equal work, she is deprived of roughly the same percentage of living standards and pension.

Norway would like the complaint to refer to each case of inequality in each sector and company. In this way, the country would avoid all responsibility for these inequalities. The fact is that there is a lack of political will since it has been proven that there is pay inequality

in the country, that there is a lack of resources and finance allocated to the monitoring bodies and that there is an insufficiently effective access to justice. This lack of political will allows a situation of inequality to persist. Accordingly, the objection is without substance.

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

The European Committee of Social Rights will notice similarities in the observations of certain states. Indeed this consultation is confirmed by the observations of the Netherlands in which it is stated (page 1, paragraph 6): *“Having become aware of the submission of fifteen similar complaints, it was agreed between the Government Agents that each of the respondent states will formulate its own observations on admissibility.”*

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

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

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

The UWE’s complaint should therefore be declared admissible.

ON THESE GROUNDS

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

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

and to examine this collective complaint on the merits.

Without prejudice
19 March 2017



