



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

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University Women of Europe (UWE) v. Portugal

Complaint No. 136/2016

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
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Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

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

On the basis of the report presented by Eliane CHEMLA,

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 Portugal 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 Portugal.
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 wished 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) ("the ETUC") asked for an extension of 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 16 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. The Government's further response was registered on 15 March 2018.

11. Pursuant to Rule 32A of the Rules, the President invited the European Network of Equality Bodies (EQUINET) to submit observations by 30 March 2018. EQUINET's observations were registered on 30 March 2018.

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 Portugal constitutes a violation of Articles 1, 4§3, 20 and E of the Charter on the following grounds:

- Firstly, a pay gap between women and men still persists to the detriment of the former. UWE maintains that Portugal has not achieved equal pay for equal work and has not ensured the respect for the principle in practice.
- Secondly, UWE alleges that women are still under-represented in decision-making positions in private companies.

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

B – The respondent Government

15. The Government considers that although the gender pay gap exists as shown by statistics, Portugal is making all necessary efforts to reduce it. Therefore, it asks the Committee to dismiss UWE's allegations as unfounded.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics on the principles of equality between women and men, concludes that it appears that the minimum pay gap between men and women lies above 5.5% in almost all of the countries analysed. The ETUC therefore concludes 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, in the sectors of undocumented work or the informal economy, the gender pay gap is probably even higher).

17. The ETUC 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 on decision-making boards in private companies, is a fairly new element appearing at international and national level as a problem to be seriously dealt with. Nevertheless, both elements are covered by Article 20 of the Charter which guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex".

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

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

- the coverage of all workers is guaranteed;
- the general legal concept of combatting the pay gap between men and women 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 nevertheless considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. As regards Portugal, the ETUC maintains that pay discrimination between women and men still exists, despite the fact that it is prohibited and that there is legislation that recognizes the right to equal pay.

24. 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. 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.

25. As regards a procedural perspective (i.e. a general framework to ensure a satisfactory application and enforcement/supervision of the principle of equal pay), 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. Particularly, the under-representation in decision-making positions within private companies has only been addressed in more recent years. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 20 of the Charter from the substantive point of view.

26. 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 formal perspective.

OTHER OBSERVATIONS

A – The European Union

27. 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.

28. 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), the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

29. 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.

30. In November 2017, the Commission adopted a Communication: EU Action Plan 2017-2019, 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

31. 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.

32. 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.

33. 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 aspects into account.

B – European Network of Equality Bodies (EQUINET)

34. The Commission for Equality in Labour and Employment (CITE) has submitted its observations on behalf of EQUINET concerning Portugal.

35. The CITE was created in 1979 within the Portuguese Ministry of Labour in order to fight discrimination and promote equality between women and men in labour, in employment and in vocational training. It is the national mechanism whose mission is to pursue gender equality in work and employment, the protection of maternity and paternity and the reconciliation of professional, family and personal life. CITE undertakes a regular activity of disseminating general information, provides legal support to alleged gender-based discrimination victims, receives complaints relating to such matters, and issues legal opinions concerning equality and non-discrimination in labour and employment.

36. CITE also issues legal opinions, which employers must obligatorily request before dismissing any pregnant worker, any worker who has recently given birth or who is breastfeeding, or male worker during the parental leave; or when employers disagree with part-time or flexitime work for male or female workers with one or more children under the age of 12. It also issues legal opinions related to other legal provisions on equality and non-discrimination between women and men.

37. Concerning complaints regarding violations of legal provisions on equality and non-discrimination between women and men, CITE only received, between 1 January 2010 and 30 June 2017, nine complaints related to the gender pay gap. More than 90% of the legal opinions issued by CITE, and the complaints referred to it concern women.

38. Since April 2011, CITE conducts the "Appraisal of the legality of collective bargaining provisions with regard to their compliance with the principle of equality between women and men enshrined in labour law" (in accordance with Article 479 of the Labour Code; article 9 of the Decree-Law no. 762 of 26 March 2012, and Law n° 23 of 25 June 2012). The Collective Regulation Instruments that contain provisions not in conformity with the law are referred to the Public Prosecution. In most situations, when there is evidence of discrimination in the said provisions, the parties accept these recommendations and change them voluntarily in accordance with the Labour Code, without any need for further legal action. Between 2012 and 2016, 822 Collective Labour Regulation Instruments (IRCT) were assessed. Out of this total, 59 IRCT contained illegal clauses, and the contracting parties were notified for a preliminary hearing. 145 standards were deemed contrary to the law.

39. CITE maintains that the right to equal pay for equal work or work of equal value enshrined in national legislation has not been fully realised in practice, as the statistics on wage inequality between women and men show.

40. In order to tackle the gender pay gap, several initiatives have been undertaken:

- Between 2006 and 2009, the project "Re-evaluating work to promote gender equality", promoted by a Trade Union Confederation in partnership with several organisations, including the ILO office in Lisbon and CITE, was developed. It was an experimental project aimed to develop and test a job evaluation method free from gender bias, centred on the value of work, allowing the application of the principle of "equal pay for equal work or work of equal value". During the project, this methodology was tested in several companies (mainly SME) of the food and beverage sector. Because of this process, some companies realised that some of the occupational categories were gender segregated and that the occupations mainly performed by women were less valued than the ones performed by men. Also, there were a number of female occupations where the

working conditions were much worse than the working conditions of male dominated occupations. These findings allowed the companies to improve the working conditions and to review some occupational categories. In one company, some women moved to posts that were typically occupied by men. After the project finished, the job evaluation method developed within its framework was applied in three economic sectors (textile industry, footwear industry and woollen industry). The result of this work of job evaluation in these sectors was the identification of the occupational categories in each sector that are gender segregated and where the pay gap is gendered. This diagnosis allowed the trade union of these sectors and the employers' associations of the each sector to start a collective bargaining process in order to review some of the most gender-segregated occupations and include this into the collective labour regulation instruments.

- In 2013, a working group formed by CITE, the Cabinet of the Secretary of State of Employment and the Cabinet of the Secretary of State of Parliamentary Affairs and Equality, prepared the 1st Report on Wage Differences by Economic Activity with a view to a survey on wage differentials in the various economic activities. In 2014, this report was presented and discussed in the Standing Committee for Social Dialogue. After this session, the Government proposed recommendations with the aim of eliminating the wage differences that have no objective justification.

- In 2014 CITE developed two web tools that enable companies to analyse their personnel and pay structure, and understand whether the pay differences are gender-based or not. The Self-Assessment Survey on Equal Pay between Men and Women in Companies is a tool built in order to evaluate some organisational practices related to the valuation of the work and the payment of salaries and other benefits to their workers. The Gender Pay Gap Calculator (Calculator DSG) is a software tool that allows companies to conduct a self-assessment exercise on equal pay between men and women. It allows the measuring of the gender pay gap within the companies and the identification of concrete situations of pay gap between women and men, in order to determine whether these differences are explained by objective factors or by the sex variable.

41. In the framework of the cooperation relations between CITE and the Commission for Equality in Labour and Employment and Labour Conditions Authority (ACT), and in order to develop joint actions to raise awareness among employers, as well as to achieve a better articulation between the CITE's legal work and the ACT's inspection activity, the two entities, in a joint initiative, promoted the National Action to

Promote Gender Equality at Work. The Action Plan had a one-year duration (September 2016 to September 2017) and had the objective of raising awareness about the importance of promoting gender equality and decent work, based on four thematic axes: equal pay, harassment, protection in parenthood/work-life balance and access to work, employment and vocational training.

42. In order to encourage employers in achieving gender equality, CITE has been promoting, in partnership with the Commission for Citizenship and Gender Equality (CIG), the Equality is Quality Award (PIQ). This award distinguishes companies and other employers with policies in the area of gender equality, work-life balance and good practices for preventing and combating domestic violence and gender based violence. This award is in line with the V National Plan for Gender Equality, Citizenship and Non-discrimination 2014-2017 and the V National Plan to Prevent and Combat Domestic and Gender-Based Violence 2014-2017.

43. Since 2013, the CITE has also sponsored a working partnership with private sector organisations and state-owned enterprises, to implement, monitor and disseminate concrete actions on gender equality, including on reconciliation of work-family and personal life, on recruitment, on horizontal and vertical desegregation and on combating wage inequality. This partnership has resulted in a Project IGEN (Forum of Companies for Gender Equality) that brings together companies in the commitment to promote measures for gender equality and fight against all forms of gender based discrimination in the work. Sixty companies have joined this Forum, pledged to undertake actions to promote gender equality in their organisations (including parental rights, maternity, paternity, work-family reconciliation, decision-making and pay gap), and established quantified targets for improvement. Between 2014 and 2017, the weight of the initiatives developed by the organisations that make up the Forum, within the "Remuneration and Management of Careers" typology ranged from 8% in 2014 to 12% in 2017.

44. In order to raise awareness about the persistence of the gender pay gap and put the issue on the political agenda of the social partners, the media and the general public, the CITE has launched, in the last years, a number of national campaigns on equality between women and men, such as:

- Campaign of National Promotion of Women on Boards of Companies (July 2015)
- National Campaign for the Promotion of Work-Life Balance "Time to have Time" (October 2013)
- National day on Gender Pay Gap (March 2012; March 2013)

45. Finally, on 30 June 2015, the CITE launched the National Promotion Campaign for Women on the Boards of Directors. In 2015, in Portugal, 59% of university graduates and 54.8% of people with a doctorate degree were women. However, men

occupied 91% of the seats of members of the Board of Directors of the 17 listed companies. In the absence of an objective reason for this disparity, the CITE launched a campaign to raise awareness among stakeholders, seeking to change this trend. In Portugal, in 2014, the presence of women in the same positions was 9.5% and that of men was 90.5%, compared to the average in the EU28, where the presence of women was, in the same year, 20.2% and men was 79.8%, respectively.

RELEVANT DOMESTIC LAW

46. The parties refer to the following texts concerning equal pay.

A – The Labour Code

47. The Portuguese Labour Code, as published in Law No. 7/2009 of 12 February 2009, also contains a series of general provisions on equality and non-discrimination (Articles 23 to 28), specific provisions on discrimination on the ground of sex (Articles 30 to 32) and provisions prohibiting discrimination in access to employment and wage discrimination. Articles 33 to 65 of the Code protect women in the event of maternity and encourage sharing of household and family responsibilities by granting leave to fathers as well.

B – Council of Ministers' Resolutions on equal pay for women and men

48. **Council of Ministers' Resolution No. 13/2013 of 8 March 2013** contains a series of measures to promote equal opportunities and prospects for women and men on the labour market, particularly as regards the elimination of the pay gap, including the preparation of a report detailing these disparities and breaking them down according to sector of activity.

49. **Council of Ministers' Resolution No. 18/2014 of 7 March 2014** sets out a series of measures to combat the gender pay gap so as to arrive at true equality between the sexes. It provides as follows:

- Every public company must prepare a report every three years on the wages paid to women and men so as to identify and prevent unwarranted pay differences. The report must be disseminated and made available on the website of the company concerned.
- On the basis of this report, the company must prepare practical measures to be incorporated into its equality plan and attempt to remedy situations of unequal pay for men and women.

50. The Resolution also recommends that private companies employing over 25 employees should conduct a quantitative and qualitative survey of the gender pay gap then devise a strategy designed to correct any unwarranted difference.

51. **Council of Ministers' Resolution No. 11-A/2015 of 6 March 2015** also sets up mechanisms to promote pay equality.

C – Law No. 62/2017 of 1 August 2017 on the balanced representation between women and men in the administrative and supervisory bodies of the entities of the public sector and listed companies

52. The law establishes that from 2018 onwards there is an obligation to fulfil a minimum share of the less represented sex on the boards of directors and supervisory bodies of the companies concerned. Thus, in the state-owned companies at least 33.3% of the positions on the boards of directors and supervisory bodies have to be filled by women. For listed companies, the minimum is 20% in 2018 and it rises to 33.3% in January 2020.

D – Law No. 34/2004 of 29 July 2004 on legal aid and the Code of Labour Procedure (Decree Law No. 480/99)

53. Law No. 34/2004 grants legal protection and legal aid to nationals and EU citizens, as well as stateless persons with a valid EU residence permit, that demonstrate insufficient financial means. According to Article 8-A, people lacking financial means are entitled to free legal representation in court as well as legal advice. Regardless of any financial condition, article 7 of the Code of Labour Procedure (Decree Law No. 480/99) provides that: “Without prejudice to the legal aid system, where the law so requires or the parties so request, the Public Prosecutor's Office shall exercise the sponsorship of workers and their families”.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

54. 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.

55. 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)

56. 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.

57. 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.

58. 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.

59. 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)

60. 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.”

61. 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

62. 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.”

63. 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.

64. 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

65. 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

66. The CEDAW has also criticised the (under-)representation of women in decision-making bodies in enterprises. Although it has not (yet) provided a 'General Recommendation' on this issue, it has assessed the issue in these 'Concluding Observations': (Estonia (2016)29; Slovakia (2015); Spain (2015); Denmark (2015)16.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Committee on Economic, Social and Cultural Rights

67. 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)

68. 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:

69. 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

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

71. 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.”

72. 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. [...]”

73. 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

74. Directive 2006/54/EC (the Equal Pay directive) of 5 July 2006, Chapter 1 (‘Equal pay’) of Title II, Article 4 provides:

Article 4 - Prohibition of discrimination

“For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”

75. 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).

76. 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.

77. 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

78. The European Pillar of Social Rights was proclaimed and signed in November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

79. 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."

80. 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

81. 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

82. 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.

83. Article 157(1) of the TFEU and Article 4 of Directive 2006/54/EC provide for the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration for the same work or for work to which equal value is attributed (see cases C-96/80, EU:C:1981:80, Jenkins, paragraph 22); C-237/85, EU:C:1986:277, Rummler, paragraph 11; C-17/05, EU:C:2006:633, Cadman, paragraphs 27-29).

84. The scope of Article 157(1) TFEU and Directive 2006/54/EC covers not only direct but also indirect discrimination (see to that effect, cases Jenkins, *op. cit.* paragraphs 14 and 15; C-285/02, EU:C:2004:320, Elsner-Lakeberg, paragraph 12; Cadman, *op. cit.*, paragraph 30).

85. The fundamental principle laid down in Article 157(1) of the Treaty and elaborated by the Directive precludes unequal pay between men and women for the same job or work of equal value, whatever the mechanism which produces such inequality (see, for example, C-381/99, EU:C:2001:358, Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93, EU:C:1995:155, Royal Copenhagen paragraph 45) or pay provided on a voluntary basis (4557/93, EU:C:1996:33, Lewark paragraph 21.). The source of unequal pay must be unique or single, because if the differences identified in the pay conditions of workers performing the same work or work of equal value cannot be attributed to a single source, there is nobody which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 157(1) TFEU (Lawrence, C-320/00, EU:C:2002:498, paragraph 18 ; Allonby, C-256/01, EU:C:2004:18, paragraph 46).

86. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, Barber, C-262/88, EU:C:1990:209, point 12 ; Bilka-Kaufhaus, 170/84, EU:C:1986:204, paragraph 15 ; Seymour-Smith, C-167/97, EU:C:1999:60, paragraph 23 ; Garland, 12/81, EU:C:1982:44, paragraph 5 ; Brunnhofer, *op. cit.*, paragraph 34). The concept of pay also includes payments which a worker receives from an employer even not performing any work provided in their contracts of employment (Gillespie, C-324/93, EU:C:1996:46, paragraph 13 ; Bötzel, C-360/90, EU:C:1992:246, paragraph 15 ; Rinner-Kühn, 171/88, EU:C:1989:328, paragraph 7). The concept of pay does not include statutory social security benefits (Defrenne, 80/70, EU:C:1971:55, paragraph 7).

87. The terms 'the same work', 'the same job' and 'work of equal value' are entirely qualitative in character in that they are exclusively concerned with the nature of the work actually performed (see Macarthys, 129/79, EU:C:1980:103, paragraph 11 ; Rummler, *op. cit.* , paragraphs 13 et 23 ; Brunnhofer, *op. cit.*, paragraph 42). In order to determine whether the work being done by different persons is the same, it is necessary to ascertain whether, taking account of a number of factors such as the nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation (see to that effect C-400/93 Royal Copenhagen, *op.cit.*, paragraphs 32 and 33).

88. As regards the method to be used for comparing the pay of the workers concerned in order to determine whether the principle of equal pay is being complied with genuine transparency permitting an effective review is assured only if that principle applies to each aspect of remuneration granted to men and women, excluding any general overall assessment of all the consideration paid to workers (C-285/02 Elsner-Lakenberg, *op. cit.*, paragraph 13).

89. Pay systems must be based on criteria which are of importance for the performance of specific tasks entrusted to the employee' (C-109/88 Danfoss, paragraph 22).

90. The EU Member States are obliged to take the necessary measures to enable all persons who consider themselves wronged by discrimination, to pursue their claims by judicial process. Such an obligation implies that the measures in question should be sufficiently effective to achieve the objective pursued by the directive and should be capable of being effectively relied upon by the persons concerned before national courts (see judgments in C-271/91 Marshall, C-271/91, UE:C:1993:335, paragraph 22 et Paquay, C-460/06, EU:C:2007:601, paragraph 43). EU law does not prescribe a specific measure to be taken by Member States, however, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see judgments in, von Colson et Kamann, 14/83, UE:C:1984:153, paragraphs 23 et 24 ; Draehmpaehl, C-180/95, EU:C:1997:208, paragraph 25 ; Paquay, C-460/06, EU:C:2007:601, paragraph 45).

91. Whenever there is evidence *prima facie* of discrimination, it is for the employer to prove that the practice at issue is justified by objective factors unrelated to any discrimination based on sex (C-17/05 Cadman, paragraph 31). However, it is clear from the case law of the CJEU that the burden of proof must shift when this is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay (C-381/99 Brunnhofer, *op. cit.*, paragraph 53).

92. According to CJEU case law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in C-271/91 Marshall, *op. cit.*, paragraph 26 ; Paquay, *op. cit.*, paragraph 46 ; Camacho, C-407/14, EU:C:2015:831, paragraph 33).

93. National law may not limit the time-period for a claim on arrears of pay, if an employee did not have access to the information the level of pay for a colleague of an opposite sex performing the same work (Levez, C-326/96, EU:C:1998:577, paragraph 34). An employer who has not provided the information on the level of pay for work performed by a colleague of opposite sex cannot reasonably rely on the principle of legal certainty (C-326/97 Levez, *op. cit.*, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

94. 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.

95. 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)).

96. 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.

97. 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).

98. 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.

99. Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today. The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.

100. In this respect, the Committee draws attention to the main statistical indicators which it will take into account in the examination of the instant complaint. Firstly, the unadjusted gender pay gap, which is defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men (indicator published by Eurostat). Secondly the gender overall earnings gap measures the impact of three combined factors - the average hourly earnings, the monthly average of the number of hours paid before adjustment for part-time work and the employment rate - on the average earnings of all women of working age, whether employed or not, compared to men (also published by Eurostat). Finally, with respect to the representation of women in decision-making positions, the Committee will rely mainly on statistics on the share of women on supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality).

101. 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).

102. The situation concerning the gender pay gap as well as the diversity of the solutions that the States have proposed to promote women’s right to equal pay, together with a varying degree of success in achieving the ultimate goal – guaranteeing gender equality in practice - have prompted the Committee to take a fresh look at the provisions of the Charter with a view to analysing and clarifying the State obligations arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

103. 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.

104. 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

105. 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

106. UWE recognises that the notion of equal pay for equal work or work of equal value has been incorporated into the Portuguese Constitution. However, it considers that the relevant laws are obsolete and ineffective.

Effective remedies

107. UWE cites several reports which highlight the very low number of cases of discrimination on the ground of race, ethnic origin, sexual orientation or gender which are brought to court. Case law on equal pay issues is indeed very scarce and there are many reasons for this, including the problem of the scope of comparison, the lack of personal resources of claimants, problems regarding time limits, limited compensation and sanction possibilities, and lack of trust in the judiciary. According to UWE, female workers who dare to demand equal pay for equal work put themselves at serious risk of immediate dismissal, on other grounds. And this is not to mention the cost of such proceedings, the energy they require and the pressure they place women under. Finally, the limitation period that applies in the area of pay disputes can be somewhat short when a woman has been discriminated against over a long career.

108. UWE also alleges that there is a lack of information on the powers, the funding, the administrative supervisory bodies, the efficiency of judicial supervision, proceedings, costs, independence and reliability. The large number of bodies between which these powers are divided, in a manner which is probably difficult for the workers concerned to understand, seems less a sign of the energy of the effort being put in than of its dispersion. Furthermore, the European Network of Legal Experts on gender equality and non-discrimination states as follows: “in Portugal the culture of taking judicial action against discriminatory practices is almost non-existent. Therefore, there are very few judicial decisions on such issues. There are two main reasons for this: first, for all judicial procedures, the victims have to instruct a lawyer and advance some funds and secondly, the length, complexity and difficulty in obtaining evidence may act as disincentives to victims seeking redress. In 2016 there were even fewer judicial decisions than in the preceding years” (Country Report on Non-Discrimination, 2017). UWE considers that the low number of complaints reflects the system’s failings in terms of access to effective remedies for victims of pay discrimination.

Pay transparency and job comparisons

109. UWE notes that there are many non-neutral classifications. The Government states that there are incentives to negotiate classifications if not to establish them and points to the review carried out on existing classifications by the service concerned on the basis of a reliable mechanism set up by experts. The state says nothing, however, about the component elements or characteristics of this instrument, or about the pay gap calculation method for firms, thereby making it impossible to assess the latter’s relevance in terms of exoneration for small and medium-sized enterprises escaping the legislation that applies to larger companies. In UWE’s view, therefore, the Charter would appear to have been violated where these companies are concerned.

110. UWE maintains that gender bias is encountered frequently. For instance, the workers of a municipal parks department, who are all male, are paid a bonus, but not the employees of a municipal welfare centre’s kindergartens and nurseries, who are all female; and the same could apply in a private company. Any employer who was aware of classifications could have been able to ensure balance in the situation of his or her employees to achieve equal pay. UWE argues that it is not just a matter of collective bargaining – it is the responsibility of the state.

111. UWE refers to the Committee’s Conclusions 2016 on Portugal, in which it stated as follows: “As regards equal pay comparisons, the Committee previously concluded that the situation was not in conformity with the Charter on the ground that, in equal pay cases, legislation only permits comparisons of jobs between employees working for the same company (Conclusions 2006, 2008, 2012). The Committee took note of the argument of the Government that it did not seem possible to compare two or more enterprises for wage purposes as the differences in pay could be attributable to the differences in organisation of work, investment, type of business, which are the key elements determining workers’ remuneration (Conclusions 2008, Article 20)”. The Charter requires that comparisons between companies should be possible.

Equality bodies and other institutions

112. UWE points out that there are two equality bodies in Portugal. The first is the Commission for Equality in Labour and Employment, which supervises compliance with the principles of equality and non-discrimination between women and men in employment and vocational training, examines complaints of breaches of labour legislation and issues administrative opinions, which are non-binding unless they follow judicial proceedings – although very few complaints are actually made to this body. The second is the Citizenship and Gender Equality Commission, which has local officers.

113. Co-operation between these two institutions was necessary when setting up the fifth national action plan to promote gender equality, citizenship and non-discrimination (2014-2017). However, according to UWE, with public funding on the decline, resources are inadequate. Furthermore, because equality bodies are either departments or services of the Government or depend on it, they lack independence.

114. As to the Working Conditions Authority (ACT), which is the body in charge of labour inspections, UWE states that employers are required to collect annual information on the personnel records of their employees and send it to the Ministry of Labour and Employment. This information relates to various aspects of working conditions, particularly pay. The personnel records in question are presented to the labour inspection authorities, trade unions or workers' committees (on request and in due course) and employer representatives sitting on the Standing Committee for Social Dialogue (CPCS). Employees must be able to consult their records before this procedure. On 8 March 2013 the Council of Ministers adopted a resolution in which it approved certain measures to guarantee and promote equality of opportunities and results between women and men in the labour market, including with regard to the elimination of the pay gap. The measures include the preparation and dissemination of a report on gender pay gaps by sector of activity. In addition, failure to respect the right of women and men to equal pay for work of equal value constitutes a very serious administrative offence (Article 31(6) of the Labour Code).

115. However, according to UWE, the checks carried out by the ACT are defective, and Portugal has not increased the labour inspectorate's powers to detect discrimination within companies. Budgets are not even produced and there is no information on the number of investigations made or follow-up measures.

2. The respondent Government

Recognition of the right to equal pay in legislation

116. The Government does not accept UWE's allegations concerning the existing legislation. It points out that Article 20 of the Constitution establishes the principle of equal access to justice and the courts to defend one's rights and interests. In addition, the principle of equal pay is set out in several laws and expanded upon in decrees, which are cited in the section on domestic legislation. The Government argues that this constitutional and legislative framework satisfies the requirements of the Charter.

Effective remedies

117. The Government points out that the Working Conditions Authority (ACT) has been increasing the effectiveness of the administrative processes in the recent years. In this context, ACT continued to focus on promoting the reduction of the number of pending cases. In 2016 the administrative proceedings that were pending decreased 58% compared to the year of 2013. There is also the significant increase in the number of convictions in court when compared to previous years - up 63% compared to 2015 - which reflects the investment in this area.

118. Despite all the campaigns and measures designed to raise public awareness and facilitate complaint procedures, only nine complaints concerning the gender pay gap were received by Commission for Equality in Labour and Employment (CITE) between 1 January 2010 and 30 June 2017.

119. Moreover, justice cannot be denied on the basis of financial constraints. Thus, the legal framework on access to justice and to courts is enshrined in Law No. 34/2004, which grants legal protection to nationals and EU citizens, as well as stateless persons with a valid EU residence permit, that demonstrate insufficient financial means. The legal framework on legal aid aims at facilitating and assisting citizens in their access to courts, so as to ensure that nobody is denied the right to either enforce or defend their rights in a court of law due to economic insufficiencies or by reason of their social or cultural status. Legal aid shall be granted regardless of the applicant's procedural position and of legal aid already having been granted to the counterparty. According to Law No. 34/2004 (Article 8-A), people lacking financial means are entitled to free legal representation in court as well as legal advice.

120. Regardless of financial condition, Article 7 of the Code of Labour Procedure (Decree Law No. 480/99) provides that: "Without prejudice to the legal aid system, where the law so requires or the parties so request, the Public Prosecutor's Office shall exercise the sponsorship of workers and their families". The Labour Code, in the Chapter I, Subsection III – Equality and Non-Discrimination, provides for the burden of

proof to be reversed in case of a discrimination claim. Article 25, No. 5, provides that “It is incumbent on those who claim discrimination to indicate the worker(s) in relation to whom they considered to be discriminated against, and the employer must prove that the difference in treatment is not based on any discrimination factor”, guaranteeing that the worker does not cease to exercise his/her rights due to difficulties in obtaining proof. To protect workers who have been victims of harassment, and also because reprisals often arise in the form of harassment, the Portuguese Labour Code has been amended by Law No. 73/2017, which introduced a specific provision stating that the complainant and the witnesses indicated by the employee cannot be sanctioned disciplinarily by the employer (Article 29, No. 6, of the Labour Code, approved by Law No. 7/2009). This amendment to the Labour Code also clearly establishes that employers must adopt codes of conduct to prevent and combat harassment in the workplace and must initiate disciplinary procedures when becoming aware of harassment situations.

Pay transparency and job comparisons

121. The Government maintains that several measures have been taken in the area of pay transparency and job comparisons. One example is the “Revalue work to promote gender equality” project, implemented between 2006 and 2009 by a trade union confederation in partnership with several organisations including the ILO office in Lisbon and CITE. This was an experimental project whose aim was to develop and test a job evaluation method free from gender bias, centred on the value of work and allowing the principle of “equal pay for equal work or work of equal value” to be applied in various sectors of activity. The method makes it possible to assess whether jobs which are predominantly female and predominantly male but of equal value are paid equally. This makes it an effective means of identifying and eliminating the influence of prejudices and stereotypes when determining the remuneration of men and women, thereby improving the situation of low-wage earners, most of whom are women.

122. During the project the method was tested in several companies (mainly SMEs) in the food and beverage sector. As a result of this process some companies realised that some occupational categories were gender-segregated and that the occupations mainly performed by women were less valued than the ones performed by men. They also realised that there were a number of female occupations where the working conditions were much worse than the working conditions of male-dominated occupations. These findings allowed the companies to improve working conditions, review some occupational categories and in one company, for women to move to occupations that were typically seen as men's occupations. Once the project was over, the job evaluation method was refined and applied to three economic sectors (textiles, footwear and wool). As a result of this evaluation work it was possible to identify in each of the sectors which occupational categories were gender segregated and affected by a gender pay gap. This diagnosis allowed the trade unions and the employers' associations in each sector to start a collective bargaining process to review some of the most gender-segregated occupations and include adjustments in the relevant collective agreements.

123. In 2014, CITE developed two web tools that enable companies to analyse their personnel and pay structure and understand whether the pay differences found are gender-based or not. The Self-Assessment Survey on Equal Pay Between Men and Women in Companies is designed to assess job evaluation methods and the payment of salaries and other benefits to workers. The questionnaire enables employers to identify situations that are a potential cause of unequal treatment between men and women, with effects on their wage level. The Gender Pay Gap Calculator (Calculator DSG) is a software tool enabling companies to assess for themselves whether men and women receive equal pay. It allows gaps to be measured, specific cases to be identified and an assessment to be made as to whether these gaps can be explained by objective factors or by gender differences. The method used was based on a statistical regression analysis that took into account a number of variables related to the skills required for a job and the other factors used to assess it in order to gauge their influence on basic wages and earnings. "Gender" is taken as a further independent variable since all other variables relate to it. Apart from this analysis companies are also provided with a series of statistical data on salary and earnings gaps between men and women under all the variables considered.

Equality bodies and other institutions

124. The Government maintains that since April 2011, the Commission for Equality in Labour and Employment (CITE) has been assessing the legality of collective bargaining provisions with regard to their compliance with the principle of equality set out in various labour law instruments: Article 479 of the Labour Code; Article 9 of Decree-Law No. 76/2012 of 26 March 2012 and Law No. 23/2012 of 25 June 2012. CITE receives complaints regarding violations of legal provisions on equality and non-discrimination between women and men, protection of parenthood and work-life balance. CITE also issues legal opinions, mainly in the context of procedures which oblige employers to request such an opinion in certain situations. More than 90% of the legal opinions issued and the complaints received by CITE are from women.

125. In recent years, the Working Conditions Authority (ACT) has been developing a specific programme to promote gender equality and the dignity of working conditions in order to identify, eliminate and/or reduce discrimination in hiring, remuneration systems, vocational training and performance assessments, enhance the gender dimension in inspection activities, and set up instruments which make it possible to

identify situations of discrimination and non-compliance with labour legislation in the field of gender equality in all sectors of activity. The programme is aimed at workers and their representatives, employers and their representatives, service providers, social and institutional partners. The ACT's annual programme of activities provides for visits aimed specifically at establishing an inclusive labour market, addressing gender equality as a feature of citizenship, reconciling family, personal and work life, respecting differences and the universal application of the guarantees associated with the employment contract and protecting vulnerable groups of workers. Anyone can make a request for intervention or lodge a complaint directly on the ACT website.

126. In 2014, the ACT, working with CITE, provided specific training on gender equality and non-discrimination for 160 inspectors with a view to combating gender discrimination in the workplace. The number of activities and proceedings in this field is constantly on the increase. Providing information and monitoring compliance in the area of equality and non-discrimination in employment and work is intended to protect parenting, prevent gender-based discrimination in employment and work, and guarantee equal pay for men and women for work of an identical nature, quality and quantity. The ACT website provides information to minimise difficulties in applying the law and inform employers and employees correctly about their duties and rights. It also contains the specific legislation on gender equality, a list of related psychosocial risks, examples of harassment, stress and violence, complaint forms and an FAQ section.

127. CITE, as the national mechanism responsible for pursuing gender equality in work and employment, the protection of maternity and paternity and the reconciliation of professional, family and personal life, disseminates general information regularly about these rights, by increasing the number of documents on the rights of workers, providing legal support to alleged sex discrimination victims, as well as receiving complaints and delivering legal opinions concerning equality and non-discrimination in labour and employment. By fulfilling its mission, CITE is facilitating access of sex discrimination victims to justice, namely women who continue to be faced with discriminatory practices in the labour market.

128. The ACT will continue to develop specific programs related to gender equality in its annual plans in order to reduce and eliminate discrimination, as it did in the last years. The National Strategy for Safety and Health at Work 2015-2020: "Towards Safe, Healthy and Productive Work" sets the overall framework for the prevention of occupational risks and the promotion of well-being at work for 2015-2020. It was approved by the Resolution of the Council of Ministers No. 77/2015, of September 18, and entered into force on September 21 of the same year. This National Strategy 2015-2020, in which ACT plays a crucial role, is structured in 31 measures, based on 3 strategic objectives and 6 operational objectives. Measure 3 provides for the development of prevention actions aimed at specific audiences, namely women. ACT also publishes the proceedings adopted in the context of equality and non-discrimination.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

129. 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.

130. 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.

131. 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.

132. 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).

133. The Committee notes that the principle of equal pay in Portugal is established in Article 59(1)(a) of the Constitution and Article 270 of the Labour Code. The Labour Code also stipulates that workers have a right to equal working conditions, in particular with regard to pay, and that the elements which determine the latter cannot entail any gender-based discrimination (Article 31(1) of the Labour Code). Any form of variable remuneration – namely task or output-based pay – must be established on the basis of the same unit of measurement. Calculations on the basis of working time must be the same.

134. The Committee considers that the obligation to recognise the right to equal pay for work of equal value has been satisfied.

Effective remedies

135. 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.

136. 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.

137. 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).

138. 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.

139. The Committee notes UWE's allegations, according to which the limited case law on equal pay in Portugal indicates that women who wish to initiate legal proceedings are held back, either by a fear of reprisals or because of excessive costs. The Committee further notes that the Commission for Equality at Work and in Employment (CITE) states in its observations that despite all the actions and measures taken to raise awareness in public opinion and to facilitate access to the complaint's procedure to victims of pay discrimination there have been only nine complaints lodged in this field between 1 January 2010 and 30 June 2017. No information has been provided about the reasons for the limited number of complaints on pay discrimination or about the follow-up to judicial proceedings.

140. The Committee also notes, however, the Government's argument that the cost of proceedings cannot be regarded as a cause of the low number of complaints as legislation ensures justice regardless of financial constraints. The legal framework grants access to justice to those that demonstrate insufficient financial means. People lacking financial means are also entitled to free legal representation in court as well as legal advice. According to the Report of the European Network of Legal Experts in gender equality and non-discrimination, Country Report on gender equality: Portugal 2019, gender equality cases do arrive before the equality body, CITE and the Working Conditions Authority (ACT), but in general victims do not often take their case to the courts.

141. The Committee further notes that domestic legislation, and more precisely the Labour Code provides for a shift of the burden of proof in gender discrimination cases. Retaliatory dismissals are prohibited and there are no ceilings on compensation.

142. The Committee considers therefore that despite the remaining obstacles to rendering remedies fully effective in the field of gender pay discrimination, the obligation to ensure access to effective remedies in this field is satisfied.

Pay transparency and job comparisons

143. 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.

144. 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.

145. In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken into account. The Committee further observes that the notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination. Moreover, such systems must consider the features of the posts in question rather than the personal characteristics of the workers (Conclusions XV-2, Article 4§3, Poland).

146. 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.

147. Moreover, national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important means of ensuring that the equal pay principle is effective under certain circumstances, particularly in larger companies or specific sectors where the workforce is predominantly, or even exclusively, of one sex (see Statement of interpretation on Article 20, Conclusions 2012). The Committee considers notably that job comparisons should be possible across companies, where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

148. As regards pay transparency in Portugal, the Committee acknowledges that several provisions of the Labour Code stipulate that remuneration is to be determined by criteria common to men and women (Article 31(2)) and by stipulating that job description and job classification must rely on objective criteria, common to men and women and that such criteria must exclude all forms of gender discrimination (Article 31(5)). Article 32 of the Labour Code imposes upon the employer the duty to keep gender-segregated records of recruitment forms and procedures for a minimum period of 5 years. These records must also include information that allows for research in respect of pay discrimination.

149. The Committee also notes that according to the European Network of Legal Experts in gender equality and non-discrimination, Country Report on gender equality: Portugal 2018 some of the necessary measures to ensure application of the Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency are already provided for in domestic legislation. For example, in view of point 3 of the Recommendation, information on pay in companies broken down by gender is already available to workers pursuant to Article 32(1)(g) of the Labour Code.

150. The Committee also notes that according to the above-mentioned Country Report 2018, equal pay and the concept of pay are defined in the relevant legislation. Article 24(1)(b) of the Labour Code covers the principle of equal pay in relation to all grounds of discrimination and Article 31(1) and (2) covers this principle in relation to gender equality. The report points out that “under Article 25(4) of the Labour Code, when invoking pay discrimination, the worker must identify the worker(s) in relation to whom he/she considers to be discriminated against. In this sense, a comparator is required. The law makes no mention of the possibility of a comparator, which would allow the claimant to invoke that a previous worker in exactly the same job earned higher pay. However, since there is no case law in this area, it is not possible to assess the practical difficulties in involving the hypothetical comparator”.

151. The above-mentioned Country Report 2018 also highlights that differences in pay are only lawful when based on objective criteria, common to men and women, which are productivity, seniority, and the lack of periods of absence. Nevertheless, despite this formal definition, indirect discriminatory practices cannot be completely ruled out when considering the criteria related to the lack of periods of absence of the worker, because other situations of time off are included, including time off for reasons related to care for relatives, which is more common among women than among men.

152. The Committee recalls that as regards job comparisons across companies it previously concluded that the situation in Portugal was not in conformity with the Charter on the ground that, in equal pay cases, legislation only permits comparisons of pay between workers working for the same company (Conclusions 2006, 2008 and 2012, Article 20). However, in its Conclusions 2016, the Committee acknowledged that Article 492(2)(e) of the Labour Code now establishes an obligation to expressly state the amounts of the base pay for every occupation and professional category, if they have been agreed (see also Article 492(1)(f) of the Labour Code). In addition, application of all or part of a current collective agreement can be extended by ministerial order to employers or workers within the sector of activity and professional sector defined in the agreement (Article 514(1) of the Labour Code). The Committee therefore considered that it was possible to make comparisons across the companies belonging to the same sector/which are bound by the same collective agreement as required by the Charter.

153. In view of the above, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons is satisfied.

Equality bodies and other institutions

154. 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 (the International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §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.

155. 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.

156. 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.

157. 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.

158. The Committee notes that the Commission for Equality in Labour and Employment (CITE) has several competences, which combine the functions of monitoring and promotion, assistance to victims (support and litigation) as well as decision-making. The mandate includes pursuing equality and non-discrimination between women and men at work, in employment and in vocational training and in this respect, it receives and analyses complaints linked to breaches of employment legislation and issues formal opinions on the subject. The specific outcome of cases and opinions prepared by the CITE has not been made available to the Committee.

159. The Committee further notes from the above-mentioned Country Report on gender equality 2018 that Article 479 of the Labour Code on the content of collective agreements and the question of discrimination establishes the duty of the CITE to verify all collective agreements after their publication in order to check whether they include discriminatory clauses. In the case of discriminatory clauses, it directly addresses a request to the employer to change the clauses. If the employer fails to do so, CITE presents the case to the public attorney, who can take it to court in order to have the clauses in question declared null and void.

160. With respect to its funding, in the ‘Concluding observations’ on Portugal prepared by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2015, while acknowledging the State party’s efforts to secure extrabudgetary resources for certain policies, the CEDAW expressed its concern about the reported reduction in budget allocations to the various bodies working on gender equality in Portugal, including the CITE, the equality advisers functioning at the local level and the Commission for Citizenship and Gender Equality. The Committee notes however that there has been a certain improvement in resources allocated through an increase in budget and staff, as noted in the European Network of Legal Experts in Gender Equality and Non-discrimination, Report on “Equality bodies making a difference” 2018.

161. In view of the above, the Committee notes that the CITE is in a position to implement its mandate. It therefore 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

162. Firstly, the Committee notes that the legislation lays down the principle of equal pay for equal work or work of equal value. The Committee considers that this legislation satisfies the requirements of the Charter.

163. Secondly, the Committee notes that despite certain remaining obstacles, the obligation to ensure access to effective remedies is satisfied.

164. Thirdly, the Committee notes that the principle of transparency has been recognised in the legislation and that it is possible to consult information on the pay of workers in every company, since these must produce data broken down according to gender. Moreover, there is a definition in law of work of equal value. In addition, job comparisons across companies in the meaning of the Charter is possible. The Committee therefore considers that the obligation to ensure pay transparency and to enable job comparisons is satisfied.

165. Lastly, the Committee notes that CITE has a broad mandate with specific powers in relation to pay discrimination. The Committee considers therefore that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

166. Consequently, in the light of the above considerations, the Committee holds that there is no violation of Articles 4§3 and 20.c of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

167. 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

168. UWE submits that the respondent state’s submissions include only very few relevant and reliable figures. It argues that it is difficult or impossible for women who may wish to make complaints to obtain comparative data on wages paid. It also argues that Portugal uses the pretext that it currently exceeds the European average for not having to make improvements in relation to the average performances of other countries, which is not acceptable, whether with regard to the gender pay gap or concerning balanced participation of women and men in decision-making in private companies or indeed public bodies. In 2016, the EU report on Portugal highlighted pronounced gender roles, discrimination and segmentation of the labour market.

169. The Portuguese Parliament, according to UWE, does not consider that equality is protected in Portugal, and for this it reason has tabled its draft resolution of 8 December 2017 for equal pay for women and men (*Projeto de Resolução n.o 181/XIII/3a Visa promover a igualdade salarial entre mulheres e homens*).

170. UWE also alleges that the figures provided by the Government lack detail. In fact, it claims, recent figures show clear inequalities. In February 2017, in Portugal, the gender pay gap was 53.2 %, the gender hour’s gap was 14.1 % and the gender employment rate gap was 32.7 %. It should be noted that the gender overall earnings gap in Portugal is 26.5 %. To assess the reality of this pay gap, it must be corrected or refined with other indicators and data. The indicator that the Government uses for its calculations is quite different. Because it is based on hourly wages, it does not show the wage inequalities relating to the fact that women are much more likely to be confined to part-time work than men – a choice that is sometimes forced on them. What is lacking is another indicator such as the gap measured in terms of gross annual earnings of full-time and part-time workers. Furthermore, the pay gap is calculated

solely on the basis of monthly wages, taking no account of fringe benefits. Yet the gap in this respect is even greater than that seen with regard to wages. UWE underlines that women are over-represented in the lowest full-time monthly wage categories, while the proportion of men is higher in the highest categories.

171. UWE alleges that the explicit or implicit references to an integrated policy, a synergy and networks do not mean that Articles 4§3 and 20 of the Charter are respected in practice. In its Conclusions 2016, the Committee asked for “the next report to continue to provide information on the concrete impact of all the positive measures and strategies on gender equality and the gender pay gap, and more generally, for updated information on the situation of women in employment and training as well as on all special measures and action plans taken to remove de facto gender inequalities”.

172. In the present case, UWE points out that the information provided by the state simply describes the legal and institutional framework and that the Government does not provide the required clarifications which could serve to determine the conformity of the policies launched and implemented with the requirements of the Charter. There is no sign of gender mainstreaming in the policies concerned, nor in decision-making, access to resources, procedures and practices, methodology, implementation monitoring or evaluation. There is no monitoring body and, above all, no checks are provided for or carried out. Little or no account is taken of many areas, for instance: the courses of study chosen by women, which all too often are non-scientific and unambitious; the various obstacles to promotion and access to positions of responsibility; the greater number of vocational training courses of a higher standard available for men; the large number of benefits in kind for men and the small number for women, horizontal and vertical segregation in employment; the centuries-old division of roles in the family, with no economic value being attached to the time spent on housework, forced part-time working; and failure to ensure proper work-life balance. Given the inadequacy of the conventional tools for combating discrimination and protecting victims, the respondent state has failed to take appropriate and sufficient measures.

173. UWE also asserts that the policy promoting equality in the workplace is non-binding and disparate and relies on negotiation at company level. The various bodies concerned 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

174. In Portugal, production and the dissemination of the statistical indicators are being continually improved. For instance, regarding the gender pay gap, the statistics developed by the Strategy and Planning Office of the Ministry of Labour, Solidarity and Social Security (GEP22) using existing sources (such as staff tables, social security data and earnings surveys) are being improved. Several elements have been introduced:

- a Barometer of gender wage inequality by branch (tested in the first half of 2018). It allows identifying a national indicator of wage inequality, by sector of activity.
- Balance of the gender pay inequality by company (implementation in the first half of 2018). It allows defining a coefficient of wage inequality, making possible the comparability of the positioning of the companies vis-à-vis the sector of activity and vis-à-vis the country. This tool will be also useful regarding the companies that require monitoring in this area.

175. The gender pay gap in Portugal (mainland) has been decreasing in recent years and according to the most recent data in 2016 it was 15.8%, compared to 16.7% both in 2015 and 2014. On 28 November 2017, the Government presented a bill to the Parliament (No.106/XIII) to approve measures to promote equal pay between women and men for equal work or work of equal value. This text requires the production of regular data on pay disparities per sector and company (to be prepared by the Strategy and Planning Office of the Ministry for Labour, Solidarity and Social Security).

176. Companies are required to have a transparent pay policy, based on the objective evaluation of job components. If pay discrimination is alleged, it is incumbent on the employer to demonstrate an objective pay policy. Also, companies, based on the statistical information, can be notified by the Working Conditions Authority (ACT) to present an evaluation plan. After implementation, justification of pay disparities/correction of pay discriminations must be communicated. The evaluation plan must be implemented two years after its presentation. This applies to companies with 250 or more employees in the first two years, and with 100 or more thereafter. Any worker is entitled to request an opinion by the Commission for Equality in Labour and Employment (CITE) on a potential situation of pay discrimination on the basis of sex. The company is given the opportunity to show otherwise.

177. In the new National Strategy for Equality and Non-Discrimination 2018-2030, among many others, the following concrete measures regarding the pay gap, are planned to start this year:

- a study on the Icelandic Equal Pay Standard, to learn from the Icelandic experience
- a project to ensure the effective application across sectors of job evaluation systems that are analytical and based on objective non-discriminatory criteria. This is a fundamental tool to help companies analyse their own pay systems and understand what part is unexplained and must be corrected.
- inspection actions by the Labour Inspectorate.
- integrating training in wage negotiating skills for unemployed people, with a particular focus on women.

178. The new National Strategy for Equality and Non-Discrimination 2018-2030 pays particular heed to the need to create instruments that allow for close and rigorous monitoring. Therefore, this strategy includes, for the first time, output, outcome and impact indicators with clear targets to be met. Moreover, the strategy expressly establishes that each of the three action plans must be evaluated during the third year in terms of processes, in order to stimulate the revision of the plan itself. In addition, implementation reports must be produced every year of implementation and at the end of each four-year plan of action; the 1st Report on Wage Differences by Economic Activity is to draw a picture of the gender pay gap by branch of activity. The Report should be seen as part of a set of tools and public measures adopted in order to mitigate the impact of the crisis on female employment.

179. In October 2017, the first Report led to the identification of recommendations for policies addressed to public entities and social partners.

- The tools available at CITE's website were developed to allow companies to self-assess in terms of pay gap. It was designed to allow companies to self-regulate in this matter and voluntarily adopt measures and practices that can correct the unjustified gaps.
- The tools are being upgraded to enable a more efficient collection of data resulting from their use, as well as a better articulation of the tools with the measures foreseen under the new National Strategy 2018-2030, named Portugal + Equal.

180. To encourage employers to achieve gender equality, CITE has been working, on its own since 2000 and in partnership with the Commission for Citizenship and Gender Equality (CIG) since 2009, to promote the Equality is Quality Award (PIQ), which is presented to companies and other employers running policies promoting gender equality, work-life balance and good practices for preventing and combating domestic violence and gender-based violence. The award is in keeping with the 5th National Plan for Gender Equality, Citizenship and Non-Discrimination (2014-2017) and the 5th National Plan to Prevent and Combat Domestic and Gender-Based Violence (2014-2017).

181. The Government argues that without prejudice to public policy measures, the difficulties and discrimination women face in the labour market will only be effectively combated with the active participation of employers or companies. Since 2013, CITE has sponsored a working partnership with private sector organisations and state-owned enterprises to implement, monitor and disseminate concrete measures to promote gender equality, including reconciliation of work and family and personal life, transparent recruitment procedures, horizontal and vertical desegregation, and measures to combat wage inequality. This partnership resulted in the IGEN Project or the Forum of Companies for Gender Equality, which brings together companies committed to promoting measures for gender equality and to combatting all forms of gender-based discrimination in the workplace. Sixty companies take part and have pledged to take measures to promote gender equality in their organisations, setting quantified targets for improvement. The Forum has a governance model coordinated by a task force, which ensures that the agreed methodology is applied, and the requisite objectives, strategy and activities are established. Throughout this process, companies pool their knowledge and practice and they have set up an online platform to share information.

182. Between 2014 and 2017, the proportion of activities devised by the organisations making up the Forum run under the heading "Remuneration and Management of Careers" rose from 8% to 12%. In recent years, CITE has attempted to raise awareness about the persistence of the gender pay gap and put the issue on the political agenda of the social partners, the media and the general public by launching several national campaigns on gender equality, including the following:

- Campaign for the National Promotion of Women on Company Boards (July 2015);
- National Campaign for the Promotion of Work-Life Balance: "Time to have Time" (October 2013);
- National Equal Pay Day (March 2012; March 2013).

183. Every year, CITE celebrates National Equal Pay Day, disseminating data and information on the subject on its website and in the media. In June 2017 it launched a training programme under the heading "Equality Workshops", whose aim was to analyse the pay gap on the basis of labour market indicators, combat segregation and discrimination at work and promote gender equality by deconstructing gender stereotypes and preconceived ideas.

184. The 5th Plan for Gender Equality, Citizenship and Non-Discrimination (2014 - 2017), published in Council of Ministers' Resolution No. 103/2013 of 31 December 2013, is the instrument through which public policies to promote gender equality and combat discrimination on the grounds of gender and sexual orientation are implemented. It follows on from the 4th Plan (2011-2013), which was subject to an external, independent review containing recommendations which were duly taken into

account when the 5th Plan was drawn up. On the specific subject of gender equality, Strategic Area 3 – on economic independence, the labour market and the organisation of work, family and personal life – sets out the following strategic objectives to be achieved by 2017:

- reduce persistent inequalities between women and men in the labour market, particularly as regards the pay gap;
- promote female entrepreneurship as a means of mobilising women for economic life and disseminating good practices;
- encourage the implementation of equality plans in private companies and monitor compliance when these plans are implemented in state-run companies;
- strengthen the mechanisms that facilitate access for women to economic decision-making positions.

185. The Government argues that these efforts show that Portugal regularly assesses the impact of the strategies adopted and sets a realistic timetable, paying considerable attention to the impact of its policies in accordance with the Committee's recommendations.

186. Despite the persistence of the gender pay gap, as evidenced by the statistics, Portugal is making efforts to eliminate it. In the Government's view, the aforementioned measures and initiatives should therefore be taken into account by the Committee.

B – Assessment of the Committee

a) Key figures as regards equal pay in Portugal

187. According to Eurostat, in 2017, women's gross hourly earnings were on average 16 % below those of men in the European Union (EU-28) and 16.1% in the Euro zone (EA-19). In 2017, the gender pay gap based on women's hourly earnings was 16.3% in Portugal, which was slightly higher than the EU average (16%). In 2016, the gap was 17.5%; in 2015 it was 17.8%; in 2011 it was 12.9% and in 2010 the gap stood at 12.8%. This demonstrates that between 2010 and 2017, the pay gap in Portugal increased by 3.5%, which was one of the largest increases in Europe, and the gap only began to fall again as from 2017, after a rising trend lasting several years. The overall gender earnings gap in Portugal stood at 26.5 % in 2014 (the overall average gender earnings gap in the EU was 39.8%). The adjusted or "unexplained" gender pay gap is 13.3%, while the EU-28 average is 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

188. 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.

189. 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).

190. 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.

191. 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).

192. 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).

193. 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.

194. 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.

195. The Committee observes that the European Commission 2016 factsheet on the gender pay gap refers to some of the factors that contribute to the gender pay gap in Portugal: management and supervisory positions are overwhelmingly held by men; men are more often promoted than women, and paid better as a consequence; this trend culminates at the very top, where, among CEOs, less than 4% are women; women take charge of important unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men do; women tend to spend periods off the labour market more often than men. These career interruptions not only influence hourly pay, but also impact future earnings and pensions; segregation in education and in the labour market. Ultimately, pay discrimination, while unlawful, continues to contribute to the gender pay gap.

196. The Committee further notes the 2014 Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR), which highlights that gender pay gap is still considerable in Portugal, owing to occupational gender segregation. The CESCR further recommended that the State party take measures to

close the gender pay gap, including efforts to combat horizontal and vertical occupational gender segregation in the labour market, and to ensure the effective implementation of the principle of equal pay for work of equal value.

197. The Committee also notes that in the context of the Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the Equal Remuneration Convention (No. 100) in respect of Portugal (2017), the CEACR already asked what steps the Government was taking to combat the pay gap, which was persistent and on which little progress had been made. The CEACR asked the Government to co-operate with the social partners to decide on and implement additional steps to reduce the gender pay gap, including measures to tackle occupational segregation.

198. The Committee takes note of Council of Ministers' Resolution No. 13/2013 of 8 March 2013, whose aim is to reduce the pay gap in the labour market and to combat segregation, and Resolution No. 18/2014 of 5 March 2014, which introduced a requirement for public-sector undertakings and a recommendation for private-sector undertakings with over 25 workers to produce a report on the pay received by women and men so as to be able to measure the gap. According to CITE, in 2015 the gap was greater when a higher level of education was required and the longer workers had been in service.

199. The Committee notes that the Government has submitted very detailed information on the action it has taken to reduce the gender pay gap, describing its plans for 2007-2010, 2011-2013 and 2014-2017. It has conducted several studies, which show that the pay gap is larger in some sectors of the economy.

200. The Committee also takes note of the activities and projects developed by CITE in order to promote equality and non-discrimination between men and women at work such as: (i) the Gender Equality Instruments and Methodologies Project (PIMIG) which has as objectives to increase the prominence of the gender dimension in inspection actions by the ACT and to make the labour inspectors' work more effective when it comes to detecting and rectifying wage discrimination between women and men; (ii) a project which developed two electronic tools in order to analyse gender pay gaps: Self-reflection Questionnaire on Wage Equality between Men and Women in Enterprises, and the Gender Pay Gap Calculator; (iii) campaigns to raise public awareness of the persistence of wage inequality between women and men; and (iv) IGEN – Enterprises for Gender Equality Forum – a network of enterprises and organisations developed by CITE in order to promote gender equality at work and in employment.

201. The Committee considers that Portugal has collected data regarding the gender pay gap, has analysed it and has produced relevant statistical data. The Committee notes, however, that the gender pay gap, which is an indicator of whether these measures have been successful, rose considerably between 2010 and 2016, and began to fall slightly only from 2017 onwards. There is still significant segregation in the labour market, and there has been no clear and sustained reduction in the pay gap. The actions launched by the Government have not therefore resulted in sufficient measurable progress in this area.

202. In the light of the above, the Committee holds that there is a violation of Article 20.c of the Charter on the ground that the measures taken to promote equal opportunities for women and men in respect of pay are insufficient and have not resulted in measurable progress.

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

203. Article 20 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

204. UWE maintains that in Portugal, only 6% of the seats on the highest decision-making bodies of listed companies are occupied by women, in other words fewer than one in ten. Measures seem to be taken to increase the role of women in the major listed companies. A Council of Ministers’ Resolution includes provisions to increase the representation of women in the decision-making positions of state-run companies, but this measure is inadequate.

205. According to an EU study published in January 2016, entitled “Gender balance on corporate boards”, women represent 22.7% of the members of boards of directors in the European Union. A law of 2006 sets a 33.3% quota for candidates of each sex in various elections, whereas this would have to be 50% for true parity to be achieved.

It is clear that both company managers and political leaders find it difficult to comply with gender equality laws.

206. UWE adds that the Government recognises that 91% of the members of the management boards of the 17 listed companies are men. Portugal is in 23rd place in this respect among the EU member countries.

2. The respondent Government

207. On 30 June 2015, CITE launched a nationwide campaign to promote the appointment of women to company boards. In 2015, in Portugal, 59% of higher education graduates and 54.8% of those with a PhD were women. However, 91% of the members of the management boards of the 17 listed companies were men. In the absence of any objective reason for this disparity, the campaign was intended to alert stakeholders to the problem, seeking to reverse the trend. Campaign promoters hoped to raise public awareness and carry the message to a large number of companies, social partners and employees through a range of strategies, formats and tools including television, radio, the Internet, billboards, advertising on public transport and other awareness-raising activities.

208. According to the latest data provided by the European Institute for Gender Equality, relating to 2017, the proportion of women on management boards of the largest companies listed on the stock exchange in Portugal was 15.5% (compared with 84.5% for men). In the EU, the average that year was 24.6% for women and 75.4% for men. When these figures are compared with the data provided by the same Institute for the year 2014, which showed that 9.5% of such positions were occupied by women and 90.5% by men (the EU28 averages for that year being 20.2% and 79.8% respectively), there has clearly been some progress, although the matter does warrant continued attention.

209. The Government also refers to the legislation adopted in 2017 and the resolution of 2015 on the issue of the balanced representation of women and men, but states that it is still too early to assess the outcome of these. This initiative is fundamental to produce an actual change in the number of women and men in the boards and supervisory bodies of public and listed companies, raising it to at least 33,3%. This threshold is applicable to public companies as from 1 January 2018 and listed companies from 1 January 2020 (until then, 20% applies). These companies must notify the Commission for Citizenship and Gender Equality (CIG) of any changes to the composition of their boards and supervisory bodies, within 10 days. This allows for close monitorisation of the impact of this law. Adding to that minimum threshold, this law also imposes on all companies the adoption of equality plans that include, among others, work-life balance issues, equality in working conditions, and pay equality.

210. In this connection, the CITE is currently developing a guide for companies regarding these equality plans. The purpose of this guide is not only to help companies but also to facilitate monitoring of these plans by CITE and CIG and the issuing of recommendations. The guide will include sections on self-assessment and monitoring. This tool will directly impact the companies' internal policies in terms of women's protection against discrimination at different levels.

211. Finally, the Government is initiating a project to create a platform that, among others, aims to facilitate monitoring of compliance with this law and produce permanently updated and systematised information in this regard, namely by facilitating reporting duties for companies and information-sharing between public entities. Data collected from the companies report "Relatório Único" (RU) shows that 40.5% of the senior managers of private sector companies were women. In companies with 50 to 249 workers, the rate of feminisation reaches 46.8%. The employers covered by the Labour Code are obliged to submit the RU. The RU is an important tool to support labour inspection activity and provide data for statistical purposes.

212. To accelerate the needed balance in decision-making in public life, on 8 March 2017, the Portuguese Government also approved two bills, under discussion. One that establishes a minimum threshold of 40% amongst top civil servants, as well as in candidate lists and non-elective management and supervisory bodies of universities and in candidate lists and non-elective boards, disciplinary and supervisory bodies of public associations such as professional associations.

213. According to data from the Portuguese Statistical Office (INE), in 2016, of the employed population in the professional group "representatives of the legislative power and executive bodies, executives, directors and executive managers" 35.8% were women. It should be noted that during the period of the financial crisis, one of the impacts was the reduction of the number of leadership positions, especially in the most feminized sectors. Several studies on public sector adjustments in Portugal during the crisis reported the disappearance of public bodies resulting in a reduction of workers and top managers in this sector.

B – Assessment of the Committee

214. 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).

215. 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%.

216. 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.

217. The Committee notes that in Portugal, according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, the proportion of women on management boards of Portugal's largest listed companies is 24.8%. It was 21.6 in 2018, 15.5% in 2017, 10.7% in 2015 and 5.4% in 2010. The figure for 2019 is slightly higher than the EU average, which was 24.6%.

218. The Committee also notes that the Government refers to Law No. 62/2017 of 1 August 2017, which establishes a regime of balanced representation between men and women in the governing and supervisory bodies of state-owned enterprises and public listed companies. The Law stipulates that from 2018, the board of directors and supervisory bodies of the enterprises concerned must have a minimum proportion of the least represented sex: in state-owned enterprises, the board of directors and the supervisory body must have at least 33.3% women. For public listed companies, the minimum proportion of women is 20% since 2018 and will rise to 33.3% in January 2020.

219. The Committee notes that the Government has acknowledged that women are under-represented in decision-making positions and that it has taken initiatives and introduced legislative and political measures to remedy the problem. It further notes the positive trend and a real rise in the number of women in decision-making positions of private companies and within management boards.

220. The Committee takes note of the measures taken by the Government to promote access for women to decision-making positions in private companies. It concludes that, although these measures have not yet made it possible to achieve a sufficiently balanced representation of women and men, achieving the goal of at least 40% of women represented, there has been a substantial improvement in the situation. Indeed, the representation of women in decision-making positions has risen from 5.4% in 2010 to 24.8% in 2019. The Committee considers therefore that the obligation to take adequate measures to ensure a balanced representation of women in decision-making positions of private enterprises is satisfied.

221. The Committee holds that here is no violation of Article 20.d of the Charter.

IV. REQUEST FOR COMPENSATION

222. 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 making recommendations to the Committee of Ministers concerning the reimbursement of costs.

223. The Committee nevertheless maintains its view that reimbursement of costs is in principle justified and appropriate under certain circumstances and an important factor in enabling the complaints procedure to attain the objectives and the impact that led the member States of the Council of Europe to adopt it in the first place.

CONCLUSION

For these reasons, the Committee concludes:

- as regards recognition and enforcement of the right to equal pay for work of equal value,
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 11 votes to 4, that there is no violation of Articles 4§3 and 20.c of the Charter as regards access to effective remedies;
 - by 14 votes to 1, that there is no violation of Articles 4§3 and 20.c of the Charter as regards pay transparency and job comparisons;
 - by 12 votes to 3, that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies;
- by 13 votes to 2, 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;
- by 11 votes to 4, that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions within private companies.



Eliane CHEMLA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary