

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



15 November 2016

**Case Document No. 1**

**University Women of Europe (UWE) v. Portugal  
Complaint No 136/2016**

## **COMPLAINT**

**Registered at the Secretariat on 24 August 2016**



**COMPLAINT OF A VIOLATION  
OF THE REVISED EUROPEAN SOCIAL CHARTER**

**SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER**

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

**I. THE PARTIES**

**THE APPLICANT ORGANISATION**

UNIVERSITY WOMEN OF EUROPE, UWE  
GROUPE EUROPEEN DES FEMMES DIPLOMEES DES UNIVERSITES, GEFDU  
International non-governmental organisation holding participatory status with the Council of Europe,  
whose official headquarters are located at 10 Chemin du Lac, 1207, Geneva, Swiss Confederation, and whose administrative office and postal address are located at Rangeerderstraat 1, 1019 TN Amsterdam, the Netherlands,  
in the person of Edith Lommerse, President, employed in this capacity at these headquarters,

Represented by Anne Nègre, member of the Versailles Bar,  
10 avenue du Général Mangin, 78000 Versailles - France  
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**THE HIGH CONTRACTING PARTY**

PORTUGAL

## II. BACKGROUND TO THE COMPLAINT AND THE FACTS OF THE CASE

What is the actual situation of women in Europe today? Equality is still a dream for European women such as Sixtine, Victoria, Alexandra, Erin, Ines, Rafaella, Josepha, Sarah, Jana, Aurelia, Clara, Anna, Lea, Margaux, Wilhemine, Aurora and Europa.

Europa's parents dreamt of having a boy. She is lucky to have been born and not to be the second or third child her parents expected, as it is still common for female foetuses to be eliminated in many European countries (Report No. 506 by the French National Institute of Demographic Studies (INED) *Masculinisation des naissances* (The increasing proportion of male births), p. 39).

Her very first toys and books with their pictures of stereotypical sexist behaviour already indicate the submissive role she is expected to play vis-à-vis her father and her future "prince charming". And this will continue, as the history we are taught still neglects women as much as ever. Have history books, for instance, been changed to reflect the leading role played by women over the centuries? History has always been a "profession for men, who write the history of men, which they present as being universal". Yet, as Georges Duby and Michelle Perrot, member of the French women graduates' association AFFDU, remind us in their collective work *l'Histoire des femmes en Occident (The History of Women in the West)* (4 volumes, éditions Perrin, 2002), this supposedly universal account is only "half-universal".

As a teenager Europa is brilliant; she continues into post-secondary education but is not encouraged to study sciences, but advised to prepare for a profession without any responsibility or need to take decisions. Nevertheless, she continues to post-graduate level where she meets a number of wonderful teachers but also others who belittle her, and she encounters the same sexist attitude that she has encountered among students, men in the street and in sports. She wants to continue her research into women's rights but she is discouraged from doing so – it would not lead to a fine university career as there are virtually no professorships in this field.

Of course she naively believes that she can have a child when she wants, if she wants and that she will be entitled to reproductive rights and be free to choose to abort if she wishes, but her country, like others, is reneging on established rights that were once taken for granted. She returns to work after her maternity leave but she will be dismissed very shortly after the protected period, assuming that her country actually has such a period. However, of course, whereas a child is the product of sexual intercourse between a man and a woman, the woman has to bear all the responsibility. When will there also be research into effective forms of male contraception and medicines to treat women specifically in addition to the huge array that have already been developed to treat men?

Europa gets married and her husband turns out to be violent – he beats her. It is no consolation to know that every three days a woman is the victim of a femicide and that – according to French figures – there are at least 6 000 deaths of this type every year in Europe, in other words the elimination of the total population of Australia in the space of one hundred years. So Europa decides she has to do something. It is difficult for her to gain access to the courts as she has no money of her own because she has given up working because there were no nurseries with suitable opening times to allow her to combine her professional and working life. The book "*Le temps des villes*", however, suggests useful work that can be done at local and regional level. Her witnesses are vilified in court and the judges refuse to accept her evidence. Europa realises that the judges in her case are unaware of their own ignorance.

Where is she going to live with her daughters? In the end she is convicted of false accusations and her husband is delighted. Bravely she appeals against the judgment but she loses.

She reads the reports of the Council of Europe Commissioner for Human Rights, whose title in French, Commissaire aux Droits de l'Homme, translates literally as Commissioner for the Rights of Man<sup>1</sup>, she calls for the application of the European Convention on Human Rights (in French, Droits de l'Homme), and she places her hopes in the European Court of Human Rights (in French, Droits de l'Homme). She seeks application of Article 3 of the Istanbul Convention, stipulating that: “violence against women is understood as a violation of human rights” but again the French here is “droits de l’homme” – the rights of man. Europa realises that she is being beaten by her husband under the auspices of the rights of man!

Europa understands that even languages are against her. The question is whether the linguistic formulas which embody female submission and patriarchy are being changed, and the answer alas is no, such advances are constantly being rejected with absolutely no justification. In France, the Académie Française took part in a process of increasing use of masculine forms in the French language in the 17<sup>th</sup> century, as a result of which “*les jours et les nuits étaient belles*” became “*les jours et les nuits étaient beaux*”. Similar processes took place during the French Revolution and the same pattern can be identified in other European languages, reflecting a human construct at a certain period in history. It is a known fact that, at that time, human rights were devised and implemented not in a universalist form but for men alone, excluding women from the enjoyment of rights and citizenship and from public life on a long-term basis.

Why are steps not taken immediately to change European languages which discriminate against women? It would be enough to add the word “femme” (woman) to these terms and titles in French to make them respectful of women at last, and not discriminatory, as French currently is despite its being an official language of the Council of Europe. In French this would give us the following:

- “Droits de l’homme et de la Femme” – literally “the Rights of Man and Woman”
- “Convention Européenne des Droits de l’Homme et de la Femme” – “European Convention on the Rights of Man and Woman”
- “Cour Européenne des Droits de l’Homme et de la Femme” – “European Court of the Rights of Man and Woman”
- “Commissaire aux droits de l’Homme et de la Femme du CoE” – “Council of Europe Commissioner for the Rights of Man and Woman”, or failing that, a Commissioner for Women’s Rights would be welcome.

Is it just a question of language or is it also one of power, of keeping women in subordination to their families and their employers, and to a paternalist, patriarchal view of submission?

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<sup>1</sup> Translator’s note:

In the original French, each time there is a reference to “droits de l’homme” the author adds “men’s rights en anglais”. This is not correct even as a literal translation. The correct translation of “droits de l’homme” is “human rights” and a more accurate literal translation would be the “rights of man” (which may be perceived as highlighting a linguistic bias towards men). This therefore is the expression I have used in this initial explanation, while opting simply to add “in French, droits de l’homme” elsewhere in the text.

Why does the Council of Europe not do anything about symbols, Europa asks. Why are there no statues of women in the gallery around the Assembly Chamber? Could anything be more symbolic of all-pervasive inequality?

Europa hopes that the Council of Europe will adopt a specific instrument entitled the “most favoured European women clause”, the aim of which would be the upwards harmonisation of women’s rights, arriving at a uniform status and protecting them from current regressions. This status would be devised with reference to the legislation of the 47 member states, taking up the most advanced laws for women and encouraging or obliging other countries to incorporate them into their legislation.

Very few women in Europe have as perfect a command of information-processing and digital tools as Europa; she looks for comparative European data produced by the Council of Europe and beyond, but the main source of her knowledge, member states’ laws, are not all available in English or French. Europa is kept at a distance by these institutions, which are supposed to serve the citizens; she calls on them for help but cannot obtain the information she requires. Public money is used to finance these national, European and international institutions, which have grown considerably in recent years, to the detriment of civil society.

Anything other than parity is unthinkable for Europa. 50% is the only acceptable quota, for that is what equal means, but this is far from what is being recommended with regard to female representation on company boards, in public services and in all decision-making forums including parliaments, and governments, or even at the Council of Europe. And what of the strategies deployed by political parties to get round the rules, or the penalties that they are prepared to pay rather than applying a law that their own members and MPs voted in? The laws and their spirit are not respected.

She starts her career in a private company at the same level as her fellow students but she is soon refused one promotion, then another, and the reinforced concrete ceilings pile up above her. She works on average two months per year free of charge in the same employment as a man and everybody thinks this is perfectly normal. She and her like have been despoiled for generations and generations. Overwhelmingly, in the past, women always contributed to the economy without being paid, then they were paid but only very little, and now they still have to put up with the persistent inequality of being paid a lower wage than men for identical, comparable or similar work. The impact that this has on pensions is obvious and, with their lower living standards and more difficult lives, women are still the most vulnerable persons in all sectors, remaining poorer, more isolated and more abused than anyone else. Because they have less borrowing potential, they generate fewer innovations, are less independent than they hoped, earn less money than they could and have less power in most workplaces.

According to the WTO, 99% of world trade is conducted by male company managers and only 1% by females, who are also only responsible for only 3.9% of public procurement contracts (Doc. 11). The allocation of the world’s wealth is just as shocking. In not a single country is public money assigned as a priority to these gender issues.

Pay disparities between women and men for equal, similar or comparable work are a fact of life in Portugal, in breach of the European Social Charter (hereinafter “the Social Charter”). The Committee must do justice to women and find against Portugal.

### III. ADMISSIBILITY

#### 3.1. On the holder of the right to a complaint

UWE intends to demonstrate that that the European Committee of Social Rights has the jurisdiction to examine the current complaint.

On 22 September 1976 Portugal joined the Council of Europe as its 19th member. The Council of Europe budget for 2016 is €42 255 900 and Portugal contributes € 366 203 (Doc. 37; <http://www.coe.int/fr/web/portal/portugal>).

The European Social Charter (hereinafter “the Social Charter”) came into force on 1 July 1999. Portugal signed it on 1 June 1982 and ratified it on 30 September 1991. It came into force in the country on 30 October 1991.

Portugal signed the revised Social Charter of 3 May 1996 (Doc. 63) on 3 May 1996 then ratified it on 30 May 2002. It came into force in the country on 1 July 2002 ([http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/POR/RATIFIED?p\\_auth=hjizyZ3s](http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/POR/RATIFIED?p_auth=hjizyZ3s)).

Its purpose is to secure the economic and social rights of European citizens of both sexes.

Portugal signed the Additional Protocol of 9 November 1995 (Doc. 62), which authorises collective complaints, on 9 November 1995 and ratified it on 20 March 1998. It came into force on 1 July 1998. The aim of the Protocol is to enhance the monitoring of member states through a more effective mechanism than mere annual reports drawn up, *ex parte*, by the member states themselves.

The right to lodge collective complaints is enjoyed in particular by international non-governmental organisations (INGOs) holding consultative status with the Council of Europe and entered on a special list (Article 1 b of the Additional Protocol of 9 November 1995, Doc. 62).

Article 3 of the Additional Protocol provides that “*the international non-governmental organisations and the national non-governmental organisations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence*”. This competence is assessed by looking at the aims set out in the organisation’s statutes.

In addition, Articles 22, 23 and 24 of the Rules of the European Committee of Social Rights adopted on 29 March 2004 and revised on 12 May 2005 state that complaints must be addressed to the Executive Secretary acting on behalf of the Secretary General of the Council of Europe. It is specified that they must be drafted in one of the official languages of the Council of Europe, and French is one of these official languages. Complaints must also be signed by the person(s) with the authority to represent the complainant organisation.

Furthermore, with regard to applications for compensation, the European Committee of Social Rights has consistently taken the view in its decisions that while “the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints ... , it does consider that as a consequence of the quasi-judicial nature of the proceedings under the

Protocol, in case of a finding of a violation of the Social Charter, the defending State should meet at least some of the costs incurred” (decision of 12 October 2004 on Collective Complaint No. 16/2003).

In the current case, University Women of Europe (UWE) is an international non-governmental organisation set up on 28 November 1981 (Docs. 1 and 2) and was granted participatory status with the Council of Europe on 18 August 1983 under the number 5103 (Doc.3). As a result, it is a member of the Council of Europe Conference of INGOs.

At its meeting of 5-9 October 2015, the Governmental Committee of the European Social Charter and the European Code of Social Security authorised UWE to submit collective complaints in the event of violations of the Social Charter for a four-year period beginning on 1 January 2016 (Docs. 4 and 5).

UWE mostly comprises the European associations affiliated to Graduate Women International (GWI), which is the successor in title of the International Federation of University Women (IFUW), founded in 1919, and which has accreditation with various UN agencies. The IFUW was renamed GWI in 2015.

According to Article 2 of the Constitution of UWE, its purpose is as follows:

- “(a) to promote action consistent with the purpose of IFUW by encouraging cooperation between its European members at various levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the **programme** of IFUW,*
- (b) to participate in the progressive development of European Civil Society, by working to achieve the **programmes** of the Council of Europe and the European Women’s Lobby and other European governmental and non-governmental organisations as is deemed appropriate by the aims and **programmes** of UWE,*
- (c) to promote lifelong education, especially for women and girls.”*

Article 3 of the Constitution provides as follows:

- “1. The legal seat of UWE/GEF DU shall be that of IFUW.*
- 2. Should the seat of IFUW be moved outside Europe, the seat of UWE/GEF DU and the place of that seat shall be determined by the Assembly.*
- 3. The location of the Head Office shall be determined by the President.”*

The legal seat (or headquarters) of GWI, successor in title to IFUW, is located at 10 Chemin du Lac, 1207, Geneva, Swiss Confederation, [www.graduatwomen.org/](http://www.graduatwomen.org/).

This address is also the headquarters of UWE but its administrative office and postal address are located at Rangeerderstraat 1, 1019 TN Amsterdam, the Netherlands; e-mail: [boarduwe@gmail.com](mailto:boarduwe@gmail.com); website: <http://www.uweboard.wordpress.com>.

The UWE member associations or federations referred to in Article 4 of the UWE Constitution are from the following countries: Germany, Austria, Bulgaria, Cyprus, Croatia, Scotland, Spain, Estonia, Finland, France, Italy, Ireland, Moldova, Norway, the Netherlands, Romania, the United Kingdom, Slovenia, Switzerland and Turkey.



Under Article 12 of the Constitution, the Board comprises five persons of at least three different nationalities, namely a President, two Vice-Presidents, a Secretary and a Treasurer, elected for a three-year term, renewable once (Article 13). Article 8 of the Constitution requires a general meeting to be held once a year and this is indeed the case.

At the general meeting held in Utrecht, in the Netherlands, on 29 August 2015, Edith Lommerse, Netherlands (Doc. 6) was re-elected as President for a three-year term, following on from her first term beginning in June 2013.

UWE President, Edith Lommerse, is a volunteer like all other UWE members. She was born on 5 March 1961 in Versailles, France, lives at Rangeerderstraat 1, 1019 TN Amsterdam, Netherlands, and is a Dutch national. Currently, Edith Lommerse is employed as an advisor to the Dutch police.

In 2016 the Board members are as follows:

- Two Vice-Presidents: Isabelle Trimaille, France, and Elena Flavia Castagnino, Italy,
- Secretary: Roxana Petrescu, Romania.

Attention should also be drawn to Article 18 of the UWE Constitution, which states that “*the Assembly will be represented in legal actions both as plaintiff and as defendant by the president and one member of the Board designated to that effect by the Assembly*”.

The instructions enclosed herewith, as issued to Ms Anne Nègre, member of the Versailles Bar, have been duly signed by the UWE President, Edith Lommerse, and its Secretary, Roxana Petrescu, in accordance with the organisation’s Constitution (Docs. 9/1 and 9/2).

### **3.2. UWE’s competence to submit a collective complaint**

This movement, bringing together women with at least three years in higher education, was founded in 1919. The European members wished to found a “regional” group and decided to set up UWE.

GWJ and then, from its establishment onwards, UWE, have been active in every campaign for gender equality in all areas, including securing the right to vote and stand in elections, launching the idea of parity and negotiating it, making women more independent, education for girls, life-long learning for women, increasing the role of women in decision-making, representation of women on company boards, combating violence against women, contraception and sexual freedom, inequalities in marriage contracts, equal inheritance rights, parentage issues and the place of women in schools and university and the sciences and other fields, considering that education is the key providing access to these.

Women from this movement are members of INGO delegations at UN agencies in New York, Vienna, Paris and Geneva, where they take part in meetings and contribute their expert opinions to bodies such as the Commission on the Status of Women, ECOSOC and UNESCO, and at all the European institutions including the European Union and the Council of Europe.

Members attended the International Conferences on the Status of Women held in Mexico in 1975, Copenhagen in 1980, Nairobi in 1985 and Beijing in 1995, where they also held workshops. The Beijing Platform for Action was adopted by the governments present

including that of Portugal and called for society as a whole to be re-assessed from a gender perspective.

Affiliates of UWE or GWI such as the state-approved French Association of Women Graduates, AFFDU, founded in 1920, which is located at 4 rue de Chevreuse, 75006 Paris, and is the French branch of GWI, which was formerly IFUW, have had highly distinguished members including the two-time winner of the Nobel Prize for Physics, Marie Curie, and her daughter, Irène Joliot-Curie, who also won the Nobel Prize for Physics.

In other countries, members have included:

- Barbara McClintock, winner of the Nobel Prize for Medicine;
- Wangari Maathai, Nobel Peace Prize winner;
- Mary Robinson and Micheline Calmy-Rey, heads of state;
- Barbara Prammer, first woman president of the lower house of the Austrian parliament;
- Jeanne Chaton, an AFFDU member who played an active part in drafting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (as reflected in the collective work edited by Diane Roman, “*La Convention pour l’Elimination des Discriminations à l’égard des Femmes*”, published by Editions A. Pedone, France, 2014)
- Françoise Gaspard, former Vice-Chairperson of the CEDAW and member of the AFFDU and hence of UWE
- Hillary Clinton, who was a member of the affiliate American association in Arkansas.

The women of this movement have taken an active role in the history of gender equality in Europe and the world, often courageously, and often for no financial reward. If any organisation has the competence and legitimacy to submit this complaint it is UWE.

UWE notes that while substantial efforts have been made through various treaties, conventions and charters including the Social Charter, to improve the laws and regulations of the Council of Europe member states including Portugal on gender equality, **de facto equality does not exist anywhere.**

UWE believes that equal pay for women and men for equal, similar or comparable work is a prerequisite for democratic justice. Fifteen of the countries which have ratified the Social Charter also authorise INGOs to submit collective complaints on this point. UWE has decided to submit 15 collective complaints in order to make equal pay for equal, similar or comparable work between women and men an everyday reality for the women of these 15 countries, and in the hope that there will be an awakening in the other 32 Council of Europe member states.

### **3.3. UWE’s right to lodge a collective complaint against Portugal**

At its general meeting in Utrecht, Netherlands, on 29 August 2015, UWE adopted the following two resolutions (p.7):

- To seek authorisation to lodge a collective complaint under the Social Charter
- To lodge a collective complaint under the Social Charter.

A reminder of these resolutions figured in the report of the latest UWE general meeting held in Winchester on 26 June 2016 (Doc. 8) and those attending the general meeting were informed of the action taken on the decision to lodge collective complaints.

Pursuant to these resolutions, UWE sought authorisation from the European Social Charter Department and the Council of Europe to lodge collective complaints (Docs. 4 and 5). It also asserted its competence on this occasion and it does not seem possible now for this to be called into question. It has authorisation in this respect because it figures on the list of INGOs authorised by the Governmental Committee of the European Social Charter and European Code of Social Security on 1 July 2016, CG(2016)13. The period of four years runs from 1 January 2016 (Doc. 9).

It is under these conditions that UWE is competent and qualified to lodge a collective complaint against the fifteen countries authorising collective complaints procedures, including Portugal.

#### **IV. THE VIOLATIONS OF THE CHARTER**

##### **4.1. The violated articles of the Social Charter and the subsequent related texts**

Article 4 of the 1995 Protocol provides that a complaint must “relate to a provision of the Social Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision”.

The spirit and the letter of the Social Charter require equal treatment of women and men by the member states, enabling equal pay for equal, similar or comparable work between women and men to be secured at last.

The aim of the Social Charter is to guarantee European citizens’ economic and social rights. In its Preamble already, it states as follows: “Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin”. Article 1 states that “All workers have the right to just conditions of work”.

Article 1 of the Additional Protocol of 1988, on the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex is binding on states which have ratified it. It establishes that all workers have this right (Doc. 61, Part 1, § 1) and confirms this in Article 1§1 in 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:*

- access to employment, protection against dismissal and occupational resettlement;*
- vocational guidance, training, retraining and rehabilitation;*
- terms of employment and working conditions including remuneration;*
- career development including promotion.”*

The revised Social Charter comprises key articles to promote respect for the principle of equal pay for equal work:

- Article 4§3 states as follows: “*With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake ... to recognise the right of men and women workers to equal pay for work of equal value*”. The concept of work of equal value is confirmed by this.
- Article 20 states as follows: “*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:*
  - a. access to employment, protection against dismissal and occupational reintegration;*
  - b. vocational guidance, training, retraining and rehabilitation;*
  - c. terms of employment and working conditions, including remuneration;*
  - d. career development, including promotion*”.

This right is acknowledged, but not just in theory. It must also apply in practice and unless it does so, the Social Charter is violated.

- Article E of Part V on “Non-discrimination” states as follows: “*The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status*”.

**Taken together, these provisions make it essential to establish full equality of treatment between women and men with regard to pay for equal, similar or comparable work.**

No collective complaint has yet been lodged on this subject.

All that has been established is the Committee’s position on the effectiveness of Charter rights, which has been regularly reiterated in the following terms:

*“However, the Committee notes that the rights recognised in the Social Charter **must take a practical and effective, rather than purely theoretical, form** (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This means that, for the situation to be in conformity with the treaty, states party must:*

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;*
- b. maintain meaningful statistics on needs, resources and results;*
- c. undertake regular reviews of the impact of the strategies adopted;*
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;*

*e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable*” (Collective Complaint No. 33/2006, decision on the merits of 5 December 2007).

It is clear from the findings of the Committee itself, in its publication “European Committee of Social Rights Conclusions in a Nutshell, 2012-2015” (Doc. 38) that efforts have to be made in the area of labour law in all countries. Over the period from 2009 to 2012, 724 situations were examined and 35% gave rise to conclusions of non-conformity while 19% were deferred because of a lack of information.

**The relevant laws are out-dated and have no effect in any of the countries which have ratified the Social Charter and the subsequent related texts.** It is precisely this matter of the effectiveness of the Social Charter and the related texts which is at stake here because it deprives half of Europe’s population, namely its women, of equal pay for equal or similar work and saddles them with the numerous consequences of this situation.

Invisible, universal democracy is showing its flaws. If nothing must differentiate between women and men in law, this will systematically be to the detriment of women, amounting to a form of selective democracy. Inequalities must be visibly denounced to be combatted effectively. They must be identified and pinpointed so that they cannot be missed.

Then there is the notion of discrimination, a word which comes from the Latin “discrimen”, which means “dividing line”. “To discriminate” is understood to mean “to separate while judging” whereas “to exclude” is synonymous with “to place outside”. In the process of discrimination, we remain within one and the same space – we are included. It is in this inclusive space that there is discrimination.

When a person is discriminated against on recruitment or in the workplace, the person is already operating within the labour market or a company. For instance, instead of being completely excluded from the world of work as they were for so long, persons with disabilities are now discriminated against. Discrimination begins where exclusion ends. These notions help us to gain a better understanding of the development of inequalities and the extent to which they are entrenched within our societies. While combatting them is something which states cite as a democratic requirement, it is about time that the theory became an everyday reality for the women citizens of the world, particularly the European ones.

**There are two means by which the implementation of the Social Charter and the subsequent related texts are monitored:**

- **The reports which states produce themselves**, although these are not established through an adversarial procedure, meaning that there is room for interpretation on the part of the authors or they can highlight certain facts more than others.

Portugal has submitted many reports and replied to observations.

The facts show, however, that there is a consistent serious violation as regards women’s pay throughout their professional lives both in the private and in the public sector. For their rights to be applied tangibly and effectively and not just in theory, it is not enough to have a legal arsenal if the state does not provide the means to put this arsenal into practice, in other words converting it into actual equal pay for equal, similar or comparable work for women and men.

There has been more than enough time to achieve this since 1948 and the adoption of the Universal Declaration of Human Rights (in French, “Droits de l’**Homme**”).

- **The other means of supervision is the collective complaints procedure**, which is restricted to the fifteen countries which have accepted it. It can be noted that to date, unless we are mistaken, there has never been a case in which fifteen complaints have been lodged against these fifteen countries simultaneously for the same violation.

The purpose of collective complaints is to give substance to international and European standards. Citizens are assigned rights by a huge array of international, European and national texts, but they are not applied in practice. Imposing an obligation of means on states without instilling any real political desire to achieve results is totally insufficient, voiding national legislation and any international commitments entered into of any meaning. Yet, as will be shown below, this is precisely what has happened with the matter to which this collective complaint relates – the texts have piled up, added up, been amended and duplicated one another without having any effect.

In various cases, the Committee has stated that while it bases its assessment of the conformity of national legislation with the Social Charter and the subsequent related texts on states’ domestic law and practice, it judges the actual circumstances in the country on the basis of the arrangements made for the implementation of the Social Charter and the appropriateness of these measures on the basis of their effectiveness (ECSR, [World Organisation Against Torture v. Portugal](#), 5 December 2006, Complaint No. 34/2006; ECSR, [International Movement ATD Fourth World v. France](#), 5 December 2007, Complaint No. 33/2006; ECSR, [European Federation of National Organisations Working with the Homeless, FEANTSA v. France](#), 5 December 2007).

The actual implementation of the legislation is key as the aim is indeed to protect tangible rights, not just theoretical ones.

However, no collective complaint has yet highlighted the violation of the Social Charter with regard to equal pay for equal, comparable or similar work despite the fact it is one of the most obvious and common infringements of human rights (in French, “droits de l’**homme**”).

Portugal has undertaken to put the right to equal pay for women and men for equal, similar or comparable work into practice and to make it effective. In failing to meet this obligation, it infringes the provisions of the Social Charter and the subsequent related texts, which require this equality.

UWE fulfils the requirements to lodge a collective complaint against Portugal alleging a violation of the Social Charter and the revised Social Charter, particularly Articles 4§3, 20 and E, and the Protocol of 5 May 1988, and its action is well-founded.

#### **4.2. The main international texts signed and ratified by Portugal**

Doc. 64        The UN’s Universal Declaration of Human Rights of 1948, Article 1 of which provides as follows:

*“ All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”;*

and Article 7 of which states:

*“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.*

- ✓ Article 1 of the ILO Equal Remuneration Convention (No. 100) of 1951, which states as follows (Doc. 66):

“For the purpose of this Convention--

- (a) the term **remuneration** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term **equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex**”.

- ✓ Doc. 68 ILO Convention Nos. 111 and 100 (referred to above), both of which apply to Portugal.

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNT\\_RY\\_ID:102815](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNT_RY_ID:102815)

A non-exhaustive list of clear and detailed legal provisions can be drawn up, but given the end product none of them appear to be properly applied in the country:

- ✓ Doc. 65 The European Convention on Human Rights, which was adopted on 4 November 1950 and came into force on 3 September 1953, and Article 14 of which prohibits discrimination of any kind.

- ✓ Doc. 67 The Treaty of Rome of 25 March 1957, which required the six founding member states to achieve certain objectives before passing on to the next stage (Treaty of Rome, Article 8§3) – a requirement which was not satisfied because the objective of equal treatment of women and men was not achieved (<http://mjp.univperp.fr/europe/1957rome3.htm>). When it joined the European Union on 1 January 1986, the Czech Republic adopted EU legislation and equal treatment is therefore required by law, but is not effective in practice (Doc. 39).

Equal treatment of women and men with regard to pay is provided for in Article 119 of the Treaty of Rome, which states as follows:

*“Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.*

*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”.*

This is the only objective which was not achieved before passing on to the next stage and it has still not been achieved in 2016, 59 years later.

✓ Doc. 70 And, of course, Article 157 of the Treaty on the Functioning of the European Union, under which each member state must ensure that the principle of equal pay for equal work or work of equal value is applied. This is not the case in Portugal.

✓ Docs. 71 and 71/1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the General Assembly of the United Nations on 18 December 1979 and came into force on 3 September 1981 and an optional protocol thereto, which was signed on 6 October 1999 and came into force on 22 December 2000. Portugal signed the Convention on 24 April 1980 and ratified it on 30 July 1980, then ratified the optional protocol on 26 April 2002 (Docs. 71 and 71/1).

Article 11 of the CEDAW states: “*States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

...

*It continues in its § (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work”.*

✓ Doc. 71/2 The Vienna Declaration, which was adopted following an international conference, stated that the universal nature of human rights (in French, “**droits de l’homme**”) meant that they should also cover women’s rights – as is also the case with the social rights set out in the Social Charter, which specifically refers to women’s rights. It is enough to read this Declaration to see that women’s rights were something that was constructed alongside human rights, or the rights of man (in French, “**droits de l’homme**”), in a world made by and for men.

✓ The Charter of Fundamental Rights of the European Union, adopted on 7 December 2000

✓ Doc. 72. The Treaty of Lisbon, signed on 13 December 2007 and in force since 1 December 2009. Article 1 bis of this treaty lists equality between women and men as one of the values of the European Union. In the initial draft of this text it was proposed that equality should merely be one of the objectives to be achieved under Article 101. This essential amendment was brought about by women’s associations including the AFFDU and hence UWE in order to consolidate advances and prevent a regression in rights, which is always possible.



Other instruments which can be cited are:

- Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- Directive 2010/41/EU of the European Parliament and the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity
- Commission Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency. However, this recommendation, like many others, was not acted upon despite the international undertakings made.

Women have always benefited from the advances of European legislation and this has been an immense step forward for them, especially as these laws take a neutral stance in relation to religion. However, the major problem is their application.

In this body of law, equal pay for women and men is seen as the general corollary of the principles of non-discrimination and equality. However, in the world of work, this actually translates into unequal pay for women and men for equal, similar or comparable work, curbs on career progression and an impact on pensions, to name but a few of the effects. Evidence for these pay gaps is provided in numerous studies, which will be dealt with in more detail below.

Each year a review of European law on gender equality outlines changes in legislation and some of the case law of the CJEU and the European Court of Human Rights in this area.

Of course, the generally positive reports submitted by states to the Committee hardly contain any criticism on the subject of equal pay for equal or similar work.

The demand for this equality was already there in 1957 when the Treaty of Rome (Doc. 67) was adopted. Why did something so obvious have to be stated in a text? Never have women been respected, never have they been accorded any of the same rights as men spontaneously and the process of granting them all of these human rights (in French, “droits de l’homme”) has been extremely slow. Will the European Committee of Social Rights at last do justice to women who are humiliated in every country by being paid a lower amount than men for equal, comparable or similar work?

The Charter and the subsequent related texts require rights to be put into practice and made effective. Portugal fails to meet this requirement and therefore the finding should be against it.

#### **4.3. The main texts applicable in Portugal and their effectiveness**

The various legal provisions are shown in the report on Portugal (Doc. 33) and on the ILO NATLEX database (Doc. 35).

The very specific notion of equal pay for equal work or work of equal value has been incorporated into the Portuguese Constitution.

The private and public sectors are treated differently.

Portugal faces a difficult economic climate and has numerous obligations. However, complying with the Social Charter's provisions on equal pay for equal, similar or comparable work can act as an economic stimulus and this is a challenge which should be taken up, as will be considered further.

#### 4.4. Equality monitoring bodies:

- **Ombudsman:** Two bodies have been set up to promote equality. 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. The second is the Citizenship and Gender Equality Commission, which has local officers.

Co-operation between these two institutions was necessary for instance when setting up the fifth national action plan to promote gender equality, citizenship and non-discrimination (2014-2017). However, with public funding on the decline, political commitment may wane when it comes to implementation on the ground.

“A considerable number of experts have reported that only very few (or even no) claims on gender pay discrimination make their way up to the competent (regular or administrative) courts ... Case law on equal pay issues is indeed very scarce. Explanations for such scarcity are multiple, including the problematic scope of comparison, the lack of personal resources of the claimant, problems regarding time limits, limited compensation and sanction possibilities and also lack of trust in the judiciary” (Doc. 49, page 20).

This is the case in Portugal (Doc. 44, page 50).

Victims can complain to the Gender Equality Agency in the Field of Employment but the question is how effective such action will be. This is a matter for political choices which do not appear to be being taken.

- **Labour Inspectorate:** The body in charge of labour inspections in Portugal is the Working Conditions Authority (Doc. 42). In Portugal “almost all employers are obliged to annually collect information on the Personnel Records of the enterprise to the Ministry responsible for labour and employment regarding several aspects of their working conditions, among them, remunerations. The Personnel Records are submitted to the labour inspection authorities (ACT); trade unions or workers committees (upon request in due time); employer representatives present in the Standing Committee for Social Dialogue (CPCS). Before this the Personnel Records must be made available to the employees. The Council of Ministers approved a Resolution on 8 March 2013 21 deciding to approve some measures in order to guarantee and promote equality of opportunity and results between women and men in the labour market, including what concerns the elimination of wage gaps. The measures include the development and dissemination of a report on the wage gender gaps by industry” (Doc. 16, page 19).

“A breach of the right to equal pay for men and women constitutes a very serious administrative offence (Article 31(6), CT)” (Doc. 46).

Victims may complain to these labour inspection bodies but it is not clear what outcome they can expect. The choice of the duties that a labour inspectorate will fulfil was a patently political one.

If a woman employee dares to demand equal pay for equal, similar or comparable work, she runs a considerable risk of being dismissed quite rapidly, albeit of course on another pretext. And this is not to mention the cost of such proceedings, the energy they require and the pressure they place women under. There are so many difficulties that a reasonable lawyer will not drag a woman employee into such proceedings unless her contract has already been, or is in the process of being, terminated.

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

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

#### **4. 5. Representation of women in decision-making posts in private companies**

In Portugal, only 6 % of the seats on the boards of the largest listed companies are occupied by women (Doc. 36, page 9), which is a ratio of less than one in ten. Measures seem to be being taken to increase the role of women in large listed companies, including a cabinet resolution to increase the representation of women in decision-making posts in state-run companies, but this is only a small step.

As a result, according to a study of January 2016 by the European Union on “Gender balance in corporate boards” (Doc. 30), the percentage of women on company boards is 22.7%.

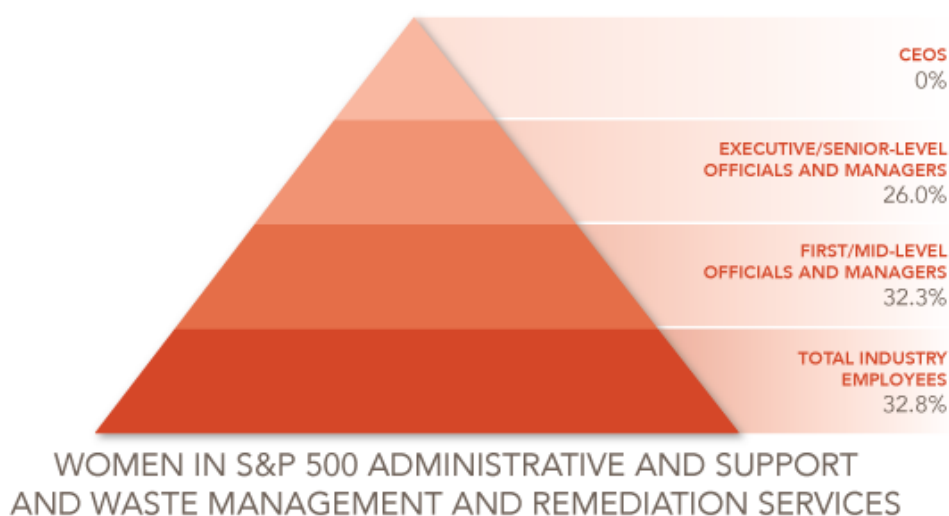
As is often the case with any centre of power, women are markedly absent from the chairs of boards and executive committees. Women’s participation in decision making on an equal footing is crucial if women are to achieve equal pay for equal, similar or comparable work.

A law adopted in 2006 set a 33.3% quota for candidates of each sex in elections whereas a 50% quota would be needed to achieve parity. It is quite apparent that both company managers and political leaders hardly comply with the legislation on gender equality and certainly not with its spirit. Men simply share power among themselves (Doc. 48).

How can we get women’s careers to evolve and bring about clear change if there are so few women in decision-making posts, or even none at all?

As these leaders in Portugal and other European countries do not seem to know where to find women to sit on company boards, just as they found it hard in the past to find women to be included on electoral lists, we must take advantage of the initiative supported by Viviane Reding, the former Vice-President of the European Commission, as a result of which a list of 200 on-line CVs was expanded to a database of 8 000 of the world's most highly-skilled women, hosted by the association Global Board Ready Women.

Yet in 2003, when one of the first surveys on the subject was conducted on 353 of the 500 American companies with the largest revenues listed by Fortune, the results showed that the financial performance of the companies with the most women managers was 37% higher than the others (P. 32, *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, Catalyst; <http://www.catalyst.org/knowledge/bottom-line-connecting-corporate-performance-and-gender-diversity>).



#### Sources

Catalyst, *Women CEOs of the S&P 500* (2016).

U.S. Equal Employment Opportunity Commission (EEOC), Unpublished 2014 S&P 500 EEO-1 data.

Note: Administrative and Support and Waste Management and Remediation Services includes office administration, personnel hiring, clerical services, cleaning services, and security services. This is a Catalyst-assigned industry classification.

S&P 500 is owned by S&P Dow Jones Indices, LLC.

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[catalyst.org](http://catalyst.org)

In 2007, a second study focused on women administrators. The 500 companies listed by Fortune were divided into four quarters according to the proportion of women on their boards and the quarter with the fewest women was compared with the one with the most.

The latter quarter's performance was 53% better than the former in terms of capital yield, 42% better in terms of sales margins and 66% better in terms of return on investments.

Studies conducted in Ireland and in France confirm that high rates of representation of women in management posts are very beneficial to companies. Women are increasingly taking up business tasks which were thought to be quintessentially male, and they are achieving far better results than expected, thus dispelling another misconception (Doc. 34 - Washington Post article, 24 September 2014).

In 2007, McKinsey published a report entitled “Women Matter – Gender diversity, a corporate performance driver” and here again, the authors were surprised at the obvious fact that women can improve performance. **This is a virtuous circle** (Doc. 33).

Parity, equality and diversity are challenges which cast doubt on companies’ conventional operating methods but they always bring benefits.

It should be pointed out that the term “parity”, as it is currently defined, emerged at the Council of Europe in 1989 following a seminar on “Parity democracy”. It subsequently became one of the principles on which the functioning of democracy was based.

None of Portugal’s economic analyses or national development plans treat this source of dynamism as a decisive factor for the future of the economy (Doc. 36).

When will a figure be put on the remuneration that has not been paid to women in the sphere of jobs and the social care of children and the elderly (thus reducing their pension savings), so as to do them justice and change the perceptions of those who govern and decide while denying the obvious? **These are political choices.**

**All of the foregoing should bear out the Committee’s finding that Portugal does not comply with the Social Charter and the subsequent related texts.**

#### **4. 6. What is the actual situation in Portugal with regard to unequal pay for equal or similar work?**

The Committee should refer to the following documents, all of which concur:

- ✓ Doc. 10 In its “introductory guide” to equal pay the ILO attempts to “*raise awareness and understanding of the principle of equal remuneration for work of equal value*” (page iv). It is pointed out that equal pay is a fundamental right under the various texts mentioned above (page 3). It is accepted that protection from racism is a fundamental right and that slavery is intolerable but the exploitation of women is hardly seen, hardly understood and hardly contested despite the fact that it is based on the same principle of domination and exploitation in all spheres including the financial one. The state has everything to gain from seeing to it that women are better paid, as they would be more financially independent and no longer depend on social assistance as many still do, while paying more taxes and receiving decent pensions.
- ✓ Doc. 11 On 8 March 2013, on the occasion of International Women’s Day, the WTO noted that women’s “*share of corporate procurement is estimated at less than 1%, and even in the US where there is a government-wide mandated procurement goal of 5%, in 2011 only 3.9 % of contracts were awarded to Women Business Enterprises*”. This is clear evidence of the bad faith of states, especially that of Portugal, which could quite easily impose special criteria in this sphere, particularly with regard to public procurement. Tax incentives are also an option worth investigating.
- ✓ Doc. 12 On 5 February 2013, research workers from the University of Denver, USA, calculated that it would not be until 2085 that women would reach enough of the highest

positions to catch up with their male colleagues. The UN states that it will take the same time to achieve equal pay.

- ✓ Doc. 13 This report, on *“Equal pay for equal work and work of equal value : the experience of equality bodies”* would be enough in itself to prove that inequality exists and hence that the requirements of the Social Charter are being infringed. This is confirmed by a study of 2015 entitled *“The Persistence of Discrimination, Harassment and Inequality for Women”* (Docs. 13 and 13/1).
- ✓ P. 14 In 2014, the OECD report on *“Unpaid care work”* took a world view and highlighted the considerable amount of time that women spent on unpaid work and the pay disparities for women and men for equal or similar work. The 4 key messages which it elaborated upon were as follows:
  - *« Around the world, women spend two to ten times more time on unpaid care work than men.*
  - *This unequal distribution of caring responsibilities is linked to discriminatory social institutions and stereotypes on gender roles.*
  - *Gender inequality in unpaid care work is the missing link in the analysis of gender gaps in labour outcomes, such as labour force participation, wages and job quality*
  - *Tackling entrenched gender norms and stereotypes is a first step in redistributing responsibilities for care and housework between women and men ».*
- ✓ Doc. 15 According to the ILO’s Global Wage Report for 2014/2015, top-bottom inequality decreased between 2006 and 2010 in Portugal, which has a developed economy. Wage levels are important for the middle classes as a factor contributing to a country’s dynamism and development (pages 31, 32 and 35).

It is surprising to find that the gap between women and men is still growing in the highest pay brackets. However, discrimination against women is also still present in all areas:

*“the bottom 10 per cent of women earned about €100 per month less than the bottom 10 per cent of men. Conversely, the top 10 per cent of high-earning women earned close to €700 per month less than the top 10 per cent of men”*. A similar trend can be found in almost all of the 38 countries surveyed in this report.

The ILO calls on *“equal pay between men and women needs to be promoted, including by combatting gender-based stereotypes about women’s roles and aspirations, addressing gender bias in wage structures and wage-fixing institutions, advocating for an equal sharing of family responsibilities, and strengthening policies on maternity, paternity and parental leave”*.

*“The report calls for legislation to provide the right to equal remuneration for work of equal value in line with the Equal Remuneration Convention, 1951 (No. 100) and judicial access to claim this right”* (Doc. 15, page 2).

✓ Doc. 16 In 2014, an EU brochure on “Tackling the gender pay gap in the European Union” noted that the average pay gap between women and men was 16.4% in the EU and 15,7% in Portugal, while identifying certain obstacles that accounted for this and making proposals (Doc. 16, pages 10 and 11).

✓ Doc. 17 The Council of Europe proposes a Gender Equality Strategy for 2014-2017. This is an interesting strategy, which, having pointed to the democratic injustice of unequal wages for equal or similar work, focuses on five main objectives:

*“1. combating gender stereotypes and sexism;*

*2. preventing and combating violence against women;*

*3. guaranteeing equal access of women to justice;*

*4. achieving balanced participation of women and men in political and public decision-making;*

*5. achieving gender mainstreaming in all policies and measures”.*

✓ Doc. 18 In 2015 we were informed by the WTO that “trade in goods and services has fluctuated significantly over the last 20 years”, rising from USD 1 179 billion in 1995 to USD 4 872 billion in 2014 (Doc. 18, page 1). There is no lack of money therefore, so the question is why women are kept in submission. The European Union is the largest exporter among the world’s regional trade blocs (Doc. 18). It is therefore a political decision to deny women equality, including equal pay to men for equal, comparable or similar work.

✓ Doc. 19 An issue briefing entitled “Wealth: Having it all and wanting more” published by Oxfam on 19 January 2015 (<http://oxf.am/ZiWb>) shows that the distribution of the world’s wealth is staggeringly uneven. **It predicted that in 2016, the richest 1% of the world population would possess more than the rest. And women possess an extremely small portion of this global wealth, amounting to only a few percentage points.**

✓ Doc. 20 In 2015, the EU confirmed the figures of 13% for the gender pay gap in Portugal and 16.3% in the EU. It also confirmed that “*the gender overall earnings gap in Portugal stands at 34.7% (the average gender overall earnings gap in the EU is 41.1%)*” (Eurostat figures, 2010).

✓ Doc. 21 In 2015, the EU gave details of the “gender pay gap”, glass ceilings which are actually more like reinforced concrete ceilings at all the stages in the careers ([gpg\\_infographic\\_2015\\_en.pdf](#))

✓ Doc. 22 On 14 July 2016, Wikigender focused on the gender pay gap and noted that at the World Economic Forum in 2015, it was found that there was no country in the world in which women and men received equal pay for equal work (Doc. 22). The figures remain stubbornly the same but there are always alleged “grey areas” where it comes to this inequality (Doc. 22).

✓ Doc. 23 The World Bank came to the same conclusions in a study of 2016 entitled “Breaking the Gender Earnings Gap”.

✓ Doc. 24. In a study of 2016 on “Women, business and the law”, the International Bank for Reconstruction and Development dealt with gender distinctions and the law. In the country-by-country tables, Portugal’s results are positive (pages 98 and 99) but they fail to reflect the actual situation on the ground (Doc. 24). How can this gap between the law and reality be bridged?

✓ Doc. 25 In its study on “Women at Work – Trends 2016”, the ILO reiterates and corroborates the findings cited above and states that “if current trends prevail, it will take more than 70 years before gender wage gaps are closed completely” (Doc. 25, p. xvi).

✓ Doc. 26. In the EU EIGE Gender Equality Index for 2015, the EU had an index of 52.9% and Portugal one of 37,9%. <http://eige.europa.eu/gender-statistics/gender-equality-index>

✓ Doc. 26/1 In 2014, the EIGE calculated a gender equality index for each of the EU countries. This brochure also points out that even though women have proved their ability by obtaining as many academic qualifications as men, wage segregation and every form of sexism still exists in society. Reading this document is highly instructive as it reminds us of fundamental rights and the requirements of justice but also that progress is slow. Section 7 relates to money and shows that circumstances are more financially insecure for women.

Portugal’s index is lower than that of other countries, well below the median level.

✓ Doc. 27 The EU’s Gender Equality Report for 2015, published in March 2016, includes more recent figures, which still show the same disparities.

✓ Doc. 28 Page 18 of the European Commission’s “Report on equality between women and men 2015” deals with “equal pay for equal work and work of equal value” and shows that women are still paid 16% less than men. The explanations are still the same and the results are stable (Doc. 28, pages 11-13, 19-22).

✓ Doc. 29 In 2016, the EU published a new country-by-country report on the gender pay gap. Portugal has an unexplained gender pay gap of 7.3% and an explained gender pay gap of 1.3% (Doc. 29 page 3).

✓ Doc. 31 In its report of 2016, on the “Progress of the world’s women 2015-2016” UN Women is able to pinpoint the facts more accurately than in previous reports but concludes nonetheless that we are still living in a world of men, in which women are discriminated against, and not yet in a world of gender equality.

✓ Doc. 36 The EU’s 2016 report on women in boards shows that in Portugal, there are pronounced gender roles, discrimination and segmentation of the labour market. Nor are there many women in decision-making posts.

✓ Doc. 44 In 2015, it was noted in the EU report on gender equality in Portugal that although the law provides for a data comparator, mention could be made of hypothetical comparators (page 17). We also learn from this report that there have been no court rulings on the principle of equal pay. Although there is a fairly well developed body of legislation on the subject, it appears to apply more in theory than in practice.



([http://ec.europa.eu/justice/gender-equality/files/ge\\_country\\_reports\\_d1/2015-it-country\\_report\\_ge\\_final.pdf](http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-it-country_report_ge_final.pdf)).

✓ Doc. 49 The EU Progress Programme site includes documents that all show that women are not paid the same as men for equal, similar or comparable work. They highlight the fact that the gender wage gap is likely to increase with the crisis, whereas narrowing the gap could serve as an economic stimulus (Doc. 49, page 14).

These documents are produced to show the scale of the problem.

One of the aims of the 4<sup>th</sup> national equality programme is to reduce the gender wage gap, as well as calling on companies to draw up equality plans ([http://www.cite.gov.pt/asstscite/downloads/IV\\_PNI\\_2011\\_2013.pdf](http://www.cite.gov.pt/asstscite/downloads/IV_PNI_2011_2013.pdf)).

This proves once again that equal pay for equal, similar or comparable work does not exist in Portugal and the Social Charter is not observed.

The funding available to deal with this issue is inadequate. The results are not forthcoming (Doc. 45). Portugal cannot be deemed to be fulfilling its Social Charter obligations regarding equal pay for equal or similar work.

According to the ILO NATLEX database (Doc. 35), Portugal has 1 511 items of labour, social security and related human rights legislation, compared with 1 281 in Germany and 6 986 in France, neither of which have been any more successful. The question then is what Portugal is doing to make this legislation effective, as follow-up has been lacking.

Portugal's gross domestic product was €179.379 billion in 2015, which should enable it to allocate the necessary funding (Doc. 39; [https://europa.eu/european-union/about-eu/countries/member-countries/portugal\\_en](https://europa.eu/european-union/about-eu/countries/member-countries/portugal_en)).

In its observations on Portugal in 2014, the CEDAW Committee expressed dissatisfaction at the situation with regard to women's pay (Docs. 40 and 43).

The result can be seen in the low number of collective complaints relating solely to women's rights. It would be interesting to investigate what percentage of total collective complaints lodged relate specifically to gender equality.

There is clear evidence of a violation of the articles of the Social Charter which guarantee equal pay for women and men for equal or similar work – a violation which has extremely serious consequences for the dignity and self-respect of women subjected to such poor treatment by a state which, as all the studies show, knowingly favours men. The Charter requires the enjoyment of rights to be tangible and effective so any plan, no matter how substantial, is not enough in itself.

**If the Committee were to recognise that Portugal complies with the Social Charter, this would validate the argument that it is reasonable to be subjected to unequal treatment with regard to pay. It would undermine the Social Charter, which offers so much hope for all women who are exploited so shamelessly in Portugal and elsewhere.**

## **V. THE OBJECT OF THE COMPLAINT AND THE COMPLAINANT ORGANISATION'S CLAIMS FOR JUST SATISFACTION**

The above-mentioned Additional Protocol of 9 November 1995 providing for a system of collective complaints and the Committee's Rules of 29 March 2004 have nothing to say on the question of compensation for expenses incurred in connection with collective complaints.

However, it is now accepted that, because of the quasi-judicial nature of proceedings before the Committee, in the event of a finding that the Social Charter has been violated the defending state should meet at least some of the costs incurred (decision of 13 October 2004 on Complaint No. 16/2003).

In relation to this case, the Committee will note the very substantial amount of work put in by the lawyer, Ms Anne Nègre, in carrying out the necessary research and preparing the complaint itself and the considerable time she had to spend on following the proceedings.

It should also be noted that although the complainant organisation is not being formally represented by a lawyer in the proceedings before the Committee, the technical nature of the subject matter has obliged the complainant organisation to make use of a lawyer's services.

Under these circumstances, UWE considers that, for work performed by a woman on behalf of women, it is justified for it to ask for the hours worked by Ms Anne Nègre and her expenses to be paid for at the usual rate for a service of this standard. UWE does not have the financial resources to pay for a lawyer and nor is it for Anne Nègre to work on such a case free of charge.

Since collective complaints form part of a country's democratic processes, the costs of proceedings should be covered whatever the outcome since they form part of the process whereby the Committee monitors compliance with the Social Charter in the state concerned.

The costs incurred amount to €10 000 excluding tax and should be paid directly to Ms Anne Nègre, who will present a bill for this sum to Portugal.

**ON THESE GROUNDS,**

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

The European Committee of Social Rights is asked:

- ✓ to confirm the competence of University Women of Europe, UWE to lodge this collective complaint;
- ✓ to confirm that the complaint is well-founded;
- ✓ to hold that Portugal's failure to observe the principle of equal pay for women and men for equal, similar or comparable work breaches the provisions of the Social Charter and subsequent related texts such as the revised Social Charter, particularly Articles 1, 4, 4§3, 20 and E;
- ✓ consequently, to order Portugal to pay €10 000 excluding tax directly to Ms Anne Nègre to cover the time she has spent and the costs she has incurred in connection with these proceedings on behalf of UWE.

19 August 2016



## VI. DOCUMENTS PRODUCED IN SUPPORT OF THE APPLICANT ORGANISATION'S CLAIMS

### Documents relating to UWE's competence

1. 5 9 2009 UWE, Constitution
2. 25 6 2011 UWE, By-Laws (internal rules of procedure)
3. 18 8 1983 UWE, Council of Europe, participatory status
4. 5 9 2015 UWE, request for authorisation to lodge collective complaints
5. 5 9 2015 to 28 10 2015 UWE, e-mail exchanges
6. 29 8 2015 UWE, report of the general meeting
7. 29 8 2015 UWE, minutes of the general meeting
8. 26 6 2016 UWE, report of the general meeting
9. 1 7 2016 INGOs holding participatory status with the Council of Europe
- 9/1 21 6 2016 UWE's instructions to Ms Anne Nègre + copies of her identity documents (French)
- 9/2 21 6 2016 UWE's instructions to Ms Anne Nègre + copies of her identity documents (English)

### Documents on the merits

10. 2013 OIT, guide égalité de rémunérations (ILO, Equal Pay – An introductory guide)
11. 2013 8 mars OMC, Echanges - Journée internationale de la femme en 2013 (8 March, WTO, Exchanges – International Women's Day 2013)
12. 2013 Article in French on research by University of Denver showing that equal pay will only be reached in 2085
13. 2013 EU, Equal Pay for Equal Work and Work of Equal Value: the Experience of Equality Bodies
- 13/1 2015 EU, Les femmes face aux inégalités, à la discrimination et au harcèlement: une réalité qui perdure (The Persistence of Discrimination, Harassment and Inequality for Women)
14. 2014 OECD, Unpaid\_care\_work
15. 2014 OIT, Rapport mondial sur les salaires 2014/15 (ILO, Global Wage Report 2014/2015)
16. 2014 EU, écart de rémunération (Tackling the gender pay gap in the European Union)
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### **Treaties, charters, laws, etc.**

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