



European
Social
Charter

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

DECISION ON THE MERITS

Adoption: 5 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Slovenia

Complaint No. 137/2016

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
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Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 17 October 2018, 19 March 2019, 12 September 2019, 16 and 17 October 2019, 2,3 and 5 December 2019,

On the basis of the report presented by Kristine DUPATE,

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 Slovenia 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 Slovenia.
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) 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 13 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 of 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 EQUINET to submit observations by 30 March 2018. EQUINET indicated that it was not able to submit information concerning Slovenia.

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

- Firstly, a pay gap between women and men still persists. UWE maintains that Slovenia has not achieved equal pay for equal, similar or comparable work because of the failure to ensure that the relevant legislation is enforced in practice. UWE further claims that the two institutions which promote gender equality (the Advocate of the Principle of Equality and the Human Rights Ombudsperson) do not have well defined powers, nor sufficient funding.
- Secondly, only a very small number of women occupy decision-making positions within private companies, since there are no effective legislative measures to ensure higher representation of women on the boards of 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 asks the Committee to declare the allegations of UWE unfounded on the basis that: firstly, the pay gap is among the smallest in Europe and the share of women in decision-making positions in the private sector is also among the highest in Europe; secondly, the relevant legislation is in conformity with the Charter, and thirdly, the Government continuously monitors the status of women and men in all fields of social life and takes measures to further reduce the pay gap.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

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

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

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

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

20. At the substantive level, there is a quantitative and a qualitative dimension to be considered. According to the ETUC, only a 'zero' pay gap should be permitted. However, on the basis that the interpretation of 'equal' does not apply in the strict sense of the word, a reasonable threshold could be a maximum of 5%. With respect to the

qualitative dimension, as the statistics show, the pay gap between men and women continues to exist. The ETUC considers that it is no longer sufficient that States are free to choose the means by which they ensure equal pay, and point to the need to go further by taking into account the evolution of international case law. Accordingly, it would appear important to require a clear and comprehensive legislation, which should at least ensure that:

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

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

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

23. As regards Slovenia, the ETUC maintains that from a substantive perspective, statistical evidence shows that there is still a gender pay gap. Moreover, the official statistics exclude small (micro) sized enterprises. It is most probable that the gender pay gap is even higher in these enterprises. From a procedural perspective, it appears evident that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient. In particular, according to ETUC, the national Labour Inspectorate does not properly ensure the satisfactory application of this important principle.

24. As regards the representation of women in decision-making positions within private companies, according to ETUC, as regards substance, statistical evidence shows that there is still an under-representation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is undisputed that women are not sufficiently represented within these bodies.

25. From a procedural point of view, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in

decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

26. For these reasons, the ETUC believes that the situation in Slovenia represents a violation of Articles 4§3 and 20 of the Charter on both counts.

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)³, 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 2017-2019¹⁰, tackling the gender pay gap. The Action Plan presents ongoing and upcoming measures taken by the Commission to combat the gender pay gap in 2018-2019. It identifies eight areas for action:

- Improving the application of the equal pay principle
- Combating segregation in occupations and sectors
- Breaking the ceiling: initiatives to combat vertical segregation
- Tackling the care penalty

- Better valorising women's skills, efforts and responsibilities
- Fighting the fog: unveiling inequalities and stereotypes
- Alerting and informing about the gender pay gap
- Enhancing partnerships to tackle the gender pay gap

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 into account.

B – European Network of Equality Bodies (EQUINET)

34. EQUINET has not submitted any observations regarding Slovenia.

RELEVANT DOMESTIC LAW

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

A – The Constitution

Article 14

“Everyone is guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance”

Article 159

“In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of the ombudsman for the rights of citizens shall be established by law”.

B – The Employment Relationship Act (hereinafter: ZDR-1)

Article 6

“(1) Employers must ensure that job seekers (hereinafter: candidates) being given access to employment or workers during their employment relationship and in connection with the termination of employment contracts are afforded equal treatment, irrespective of their nationality, race or ethnic origin, national or social background, gender, skin colour, state of health, disability, faith or beliefs, age, sexual orientation, family status, trade union membership, financial standing or other personal circumstances in accordance with this Act, the regulations governing the implementation of the principle of equal treatment and the regulations governing equal opportunities for women and men.

(2) Employers must ensure equal treatment in respect of the personal circumstances referred to in the preceding paragraph for both candidates and workers, especially regarding access to employment, promotion, training, education, re-qualification, salaries and other benefits from the employment relationship, absence from work, working conditions, working hours and the cancellation of employment contracts.

(3) Direct or indirect discrimination based on any personal circumstance referred to in the first paragraph of this Article shall be prohibited. Direct discrimination exists where, owing to a certain personal circumstance, a person was, is or could be treated less favourably than another person in an identical or similar situation. Indirect discrimination owing to a personal circumstance exists where, owing to an apparently neutral regulation, criterion or practice, a person with a certain personal circumstance was, is or could be placed in a less favourable position than another person in an identical or similar situation or condition, unless such regulation, criterion or practice is justified by a legitimate objective and the means for achieving that objective are appropriate and necessary. Any instructions for discrimination against a person on the basis of any personal circumstance are also examples of direct or indirect discrimination.

(4) The less favourable treatment of workers in connection with pregnancy or parental leave shall also be deemed discriminatory.

(5) Differing treatment based on any personal circumstance referred to in the first paragraph of this Article shall not constitute discrimination if, owing to the nature of the work or circumstances in which the work is performed, a certain personal circumstance might represent a significant and decisive condition in respect of the work and such a requirement is in proportion to and justified by a legitimate objective.

(6) If, in the event of a dispute, a candidate or worker cites facts giving grounds for the suspicion that the prohibition of discrimination has been violated, the employer must demonstrate that, in the case in question, the principle of equal treatment and the prohibition of discrimination have not been violated.

(7) Persons discriminated against or persons who help victims of discrimination may not be exposed to unfavourable consequences as a result of actions aimed at fulfilling the prohibition of discrimination.”

Article 133

“Employer is obliged to pay workers equal amounts for equal work and for work of equal value, regardless of the worker's gender. Provisions in employment contracts and collective agreements or employers' general acts which are contrary to the foregoing are invalid.”

36. The provision on equal pay for women and men is closely linked to Article 6 of the ZDR-1, which generally regulates the prohibition of discrimination and also prohibits direct and indirect discrimination in regard to wages. Since the provision of Article 133 refers to women and men, the right to equal pay for equal work and for work of equal value irrespective of gender may be enforced by women and men.

37. Violations of the provision ensuring the principle of equal pay are sanctioned by Article 6 of the ZDR-1, because a violation of the right to equal pay is also a violation of the general prohibition of discrimination. As per Point 1 of Article 217 of the ZDR-1, an employer (legal entity, sole proprietor or self-employed person) is subject to a fine of between €3,000 and €20,000 if a job seeker or a worker is put in an unequal position, or €1,500 to €8,000 for small employers and €450 to €1,200 for private persons. A fine of between €450 and €2,000 is imposed on the responsible person of an employer who is a legal entity or responsible person in a state authority or local community.

38. If a worker is of the opinion that the employer has violated the principle of equal pay arising from the employment relationship, he/she has the right to request in writing that the employer discontinues the violation and fulfill their obligations as per the procedure for enforcing rights prescribed in Article 200 of the ZDR-1. If the employer fails to fulfill their obligations or fails to eliminate the violation within eight working days of being served with the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the employer to fulfill their obligations.

39. Thus, a worker who believes they have been discriminated against regarding pay has the right to judicial protection by means of a lawsuit before the competent labour court. The provision on the reversed burden of proof (paragraph 6 of Article 6 of the ZDR-1) determines that an employer must demonstrate that the principle of equal treatment or the prohibition of discrimination is not violated if the worker provides facts in the dispute which justify the assumption that the prohibition of discrimination was so violated.

C – The Protection Against Discrimination Act

40. This Act is a framework act prohibiting discrimination on the basis of any personal circumstance, i.e. including gender. The Act defines - inter alia - the tasks and powers of the Advocate of the Principle of Equality as an independent state authority discussing cases of alleged discrimination.

Article 21

“The tasks of the Advocate of the Principle of Equality also include:

- providing independent assistance to persons subject to discrimination when enforcing their rights regarding protection against discrimination in the form of counselling and legal assistance for clients in other administrative and judicial proceedings related to discrimination;
- participating in judicial proceedings involving discrimination;
- conducting tasks of supervisory inspection on the basis of complaints about the observance of provisions;
- raising the awareness of the general public on discrimination and measures to prevent it;
- monitoring the general situation in the Republic of Slovenia in the field of protection against discrimination and the situation of people with certain personal circumstances;
- proposing the adoption of special measures to improve the situation of people who are in a less favourable position due to certain personal circumstances. “

D – The Equal Opportunities for Women and Men Act

Article 7

Unbalanced representation of both genders occurs if the representation of one gender in a certain field of social life or part thereof is below 40%.

41. The Act also provides the basis for special measures to remove objective barriers to balance the representation of genders or unequal position of persons of one gender or give special advantages in the sense of incentives to the less represented gender or gender in an unequal position, which must be founded and proportionate as per the purpose of the special measure.

42. The Government prepares and submits to the National Assembly for adoption a motion for a resolution on the national programme for equal opportunities for women and men, which is based on the proposals of ministries, local communities, social partners, non-governmental organisations and other civil society organisations, and individual experts. The resolution on the national programme for equal opportunities for women and men determines objectives, measures and key actors, and is implemented on the basis of two-year periodical plans (Article 15).

E – 2005-2013 Resolution on the National Programme for Equal Opportunities for Women and Men

43. One of the objectives defined in this Resolution was to reduce vertical and horizontal segregation and differences in pay for women and men. Various activities were executed to attain the objective of a horizontal policy on equal opportunities for both genders within the active employment policy and the encouragement of women and men to obtain knowledge and employment in fields where men or women are in minority. In addition to the defined objective of reducing vertical and horizontal segregation and differences in pay for women and men, the Resolution also defined two additional objectives: to facilitate the reconciliation of work and private life and to improve public and support services to enable a reconciliation of work and family life, which have contributed to improved harmonising of work and private life and the family

obligations of employed women and men.

F – The 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men

44. This Resolution defines the objectives which contribute to reducing the difference in pay for women and men and to enhancing the share of women in decision-making positions in the business sector.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

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

46. 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)

47. 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.

48. 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.

49. 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.

50. 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)

51. 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."

52. 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

53. 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.”

54. 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.

55. 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

56. 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

57. 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

58. 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)

59. 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:

60. 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

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

62. 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.”

63. 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. [...]”

64. 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

65. 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.”

66. 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).

67. 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.

68. 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

69. 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.

70. 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.”

71. 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

72. 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

73. 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.

74. 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).

75. 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).

76. 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).

77. 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).

78. 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).

79. 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).

80. 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).

81. 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).

82. 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).

83. 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).

84. 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

85. 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.

86. 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)).

87. 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.

88. 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).

89. 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.

90. 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.

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

92. 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).

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

94. 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

95. 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 ARTICLES 4§3 AND 20.C OF THE CHARTER AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

96. 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

97. According to UWE, the fact that a set of legal documents (Constitution, laws, etc.) prohibit gender discrimination and provide that equal treatment must be ensured in practice, does not mean that the relevant provisions are actually implemented. UWE argues that, to be effective, the legislation must produce sufficient effects, through appropriate monitoring and administrative supervision mechanisms that are reasonably regular and effective.

Effective remedies

98. UWE maintains that judicial remedies must be accessible and reliable, i.e. they should be not too expensive and not involve excessively complex proceedings and be based on rules of evidence consistent with the provisions of the EU directives on discrimination.

99. According to UWE, the Government's claim that judicial protection for workers allegedly discriminated against regarding pay is suitably provided for by law, since labour courts are accessible to everyone, including socially disadvantaged individuals, should be checked against the reports which indicate that the system of protection mechanisms is ineffective. UWE refers to the most recent annual report of the Advocate of the Principle of Equality where the latter points out that the legal remedies available in Slovenia are not effective and that the system is, in fact, not working, which can be seen from the low number of cases resolved and sanctions issued (European Network of Legal Experts on Gender Equality and Non-discrimination, Country report on Discrimination, Slovenia, 2017).

100. UWE also responds to the Government's assertion that the remedies are in place as long as labour inspectors may intervene ex officio or on the basis of reports. UWE quotes the Government, according to whom it cannot be concluded, in light of the content of reports received by the Labour Inspectorate in the past five years, that the issue of unequal pay for women and men has even arisen in practice. According to the Labour Inspectorate, no violation of the prohibition of discrimination regarding unequal pay for work of men and women has been recorded in the last three years.

101. UWE believes that rather than being proof that there is no inequality or discrimination, this lack of proceedings and reporting of wage irregularities is more likely to be proof that the inequalities are not coming to light, probably on account of a kind of implicit or explicit dissuasion in respect of the women who are the victims.

102. According to UWE, those bringing proceedings must also be protected against any kind of retaliatory measures, which UWE considers is not the case in Slovenia. In

this connection, UWE also alleges that there may be many obstacles to starting proceedings on equal pay claims, such as the fear of retaliation and the cost of proceedings.

Pay transparency and job comparisons

103. As regards job classification systems, UWE maintains that even though Slovenia mentions classifications in its submissions, it does not indicate the number of non-neutral classifications. The Government mostly refers to encouragement to negotiate classifications, but not a requirement to establish them. The Government, according to UWE, is also silent as regards the component elements or characteristics of this instrument or about the pay gap calculation method for firms.

104. According to UWE, there would appear to be a lack of occupational categories with clearly defined classification criteria, and the pitfalls in this area have not yet been properly addressed. This issue should not just be dealt with through collective bargaining, but clearly also by the State.

105. UWE further contends that outside company job comparisons are not allowed in Slovenia. According to UWE, the assessment base must not just be an individual company but must be extended to entities forming a working environment or a technical unit for a group of workers employed by several companies, including subcontractors. According to UWE, the respondent state seems to be unaware of the concept of a technical unit, as a result of which the scope of the regulations is very limited. The Government says nothing about checks on the implementation of company reports. Moreover, the size of companies is a key assessment base and a whole range of issues is still to be addressed in many companies not covered by the legal provisions on equal pay.

106. UWE affirms that the existence of structural effects, including the impact of stereotypes that are hard to change cannot serve as an excuse for the lack of progress towards meeting the requirements of the Charter. The argument that female workers are concentrated in education and health does not justify the pay gap. UWE considers that a sound system of job classifications could be a solution to this problem. States should provide information about non-neutral classifications as well as characteristics of this instrument, which the Government has failed to do.

Equality bodies and other institutions

107. UWE points out that the respondent state has two institutions promoting gender equality: the Advocate of the Principle of Equality and the Ombudsperson. While the latter has no powers in the private sector, the budget of the former is small and it lacks support.

108. As regards the Labour Inspectorate, UWE claims, referring to the report of CEDAW, that the respondent state has not stepped up the efforts to detect

discrimination in companies, due to low funding. There is no collection of data concerning gender discrimination cases identified by the Labour Inspectorates and the number of cases referred to the courts at their instigation. UWE also shares the views of ETUC in this respect where the latter claims that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient, insofar as the Labour Inspectorate fails in its task of ensuring the satisfactory application of the principle of equal pay.

2. The respondent Government

Recognition of the right to equal pay in legislation

109. The Government maintains that the relevant legislation is in conformity with the requirements of the Charter, and that the supervisory mechanisms responsible for monitoring the legislation and determining violations in practice are functioning. All supervisory mechanisms are available to everyone free of charge and in a simple manner.

Effective remedies

110. The Government maintains that judicial protection of workers who are allegedly discriminated against regarding their pay is provided for by law, since labour courts are accessible to everyone, including socially disadvantaged individuals and the rules of operations of labour courts comply with the principle of *in favorem* of the worker. Access to the court is also enabled to socially disadvantaged workers through free legal aid.

111. The Government rejects the allegation regarding the absence of protection against various retaliatory measures. The Employment Relationships Act (ZDR-1) provides for each employee that persons discriminated against or persons who help victims of discrimination may not be exposed to unfavourable consequences as a result of actions aimed at enforcing the prohibition of discrimination. Protection against retaliatory measures is thus provided for at the legislative level.

Equality bodies and other institutions

The Advocate of the Principle of Equality

112. The Government states that the Protection Against Discrimination Act is a framework act prohibiting discrimination on the basis of any personal circumstance, i.e. including gender. The Act also defines the tasks and powers of the Advocate of the Principle of Equality as an independent state authority discussing cases of alleged discrimination.

113. The Government states that the complaint may be submitted to the Advocate by any person who believes they have suffered discrimination. No formal requirements are determined for reports. A complaint may be filed in writing or verbally as recorded

in minutes. The procedures which the Advocate conducts are informal, confidential and free of charge for the parties. The Advocate may also consider a case of discrimination ex officio upon learning about the existence of discrimination on the basis of an anonymous complaint, complaint from a third party or in any other way.

114. According to the Government, it was not possible to discern from the information regarding the activities of the Advocate of the Principle of Equality that the issue of unequal pay for women and men for equal work and for work of equal value was pressing in Slovenia. The reason is that the Advocate received no complaints between 2012 and 2016 which referred to discrimination on the basis of gender, including equal pay for equal work and for work of equal value, despite the fact that the Advocate is accessible to everyone and that complaints are examined free of charge.

115. As regards UWE's allegation concerning the relevant powers, staffing levels, numbers of checks, funding and administrative supervisory bodies, the Government underlines that the budget of the Principle of Equality has been increased by more than 100% since 2016.

Human Rights Ombudsperson

116. The Government also submits the response of the Human Rights Ombudsperson of the Republic of Slovenia to UWE's allegations according to which equality between women and men does not appear to be one of the major concerns of the Human Rights Ombudsperson, as long as she/he is mainly involved with the public sector, whereas the private sector falls more within the domain of the Advocate of the Principle of Equality.

117. In this connection, the Ombudsperson states that its mandate is to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority. Therefore, the Ombudsperson has no powers in relation to any other legal entities, e.g. private companies. Furthermore, a complaint to instigate proceedings may be addressed to the Ombudsman by anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of a state authority, local self-government authority or a bearer of public authority.

118. In its submission, the Ombudsperson particularly highlights that the Employment Relationship Act (ZDR-1) determines equal treatment and prohibits (direct and indirect) discrimination (also) on the basis of gender (Article 6), and imposes damage liability on an employer (according to the general rules of civil law) who is found to violate the prohibition of discrimination.

119. The Ombudsperson contends that UWE's allegations that the existing legislation is ineffective, because of the Ombudsperson's failure to perform in practice its supervisory tasks regarding equal pay for women and men, and its failure to remove the existing obstacles to submitting complaints regarding discrimination on the basis of unequal pay for the same, similar or comparable work of women and men, are utterly unfounded.

120. Furthermore, the Government asserts that it was not possible to ascertain from the activities of the Labour Inspectorate, the Human Rights Ombudsperson, the Advocate of the Principle of Equality and the courts that the issue of unequal pay for women and men for equal work and for work of equal value was pressing.

121. In response to UWE's assertion that the non-existence of cases reveals that the inequalities are concealed, the Government claims that the absence of facts cannot directly confirm the existence of another fact or several facts, as it is only an assumption that must still be confirmed or refuted.

The Labour Inspectorate

122. In response to UWE's claims that the Labour Inspectorate does not fulfil its functions in the field of gender equality, the Government states that according to the Labour Inspectorate, violations concerning remuneration for work amounted to more than 40% of all violations in the field of employment relationship supervision in 2016. However, none of the established violations referred to gender discrimination regarding pay.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

123. 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.

124. 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.

125. 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.

126. 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).

127. As regards Slovenia, the Committee notes that Article 133 of the Employment Relationship Act (ZDR-1) guarantees equal pay for equal work or work of equal value. Moreover, Article 133 also provides that provisions in employment contracts and collective agreements of employers' general acts that are contrary to the principle of equal pay are null and void. Moreover, the provision on equal pay for women and men is closely linked to Article 6 of the ZDR-1, which generally regulates the prohibition of discrimination and also prohibits direct and indirect discrimination in regard to pay.

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

Effective Remedies

129. 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.

130. 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.

131. 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).

132. 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.

133. The Committee notes from the European Network of Legal Experts on Gender Equality and Non-discrimination, Country Report on gender equality: Slovenia, 2018 that access to courts is only ensured for alleged victims of discrimination. Interest groups, other legal entities and the equality body are excluded. For individuals seeking to enforce their rights but unable to afford the costs of litigation free legal aid is available

according to Sections 10, 11 and 13 of the Legal Aid Act (the LAA). The financial position of an applicant is assessed on the basis of his or her monthly income and that of the applicant's family, and the property owned by the applicant and by his or her family according to Section 14 of the LAA. An application for legal aid must be filed at the competent district court.

134. The Committee notes in its 'Concluding observations' concerning Slovenia that the Committee on Elimination of Discrimination against Women (CEDAW) has expressed concern about the lack of information on the number of reported cases of gender-based discrimination, including intersecting forms of discrimination. It expressed a concern about the complexity and length of legal proceedings, the introduction of labour court fees, which may deter women from claiming their rights, and the restrictions imposed on non-governmental organisations wishing to assist women in court proceedings.

135. The Committee notes from the European Network of Legal Experts on Gender Equality and Non-discrimination, Country Report on gender equality: Slovenia, 2018, that according to Section 8 of the ZDR-1, a worker may claim damages for pecuniary and non-pecuniary losses arising from unlawful acts, actions or omissions pursuant to the general rules of civil law. Damages are not limited as to their amount in the private sector. It must be taken into account that the compensation is effective and proportional to the damage suffered by the worker and that it discourages the employer from repeating the violation. The Committee also notes that Section 6 of the ZDR-1 provides for the shift in the burden of proof.

136. The Committee takes note of the fact that in its submissions UWE claims that the non-existence of domestic case law regarding equal pay only shows that there are obstacles for women to appeal, either because they are dissuaded for fear of reprisals or because the costs are excessive. The Committee observes that according to UWE, the absence of equal pay cases is likely to indicate a lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals. The Committee notes that in its reply the Government indicates that the absence of cases is due to the fact that the issue of gender pay discrimination does not arise in practice (e.g. gender discrimination in employment was neither reflected in the reports of equality bodies nor in the monitoring reports of the Labour Inspectorate). The Committee considers that even if the legislation provides for remedies in case of gender pay discrimination, there is no evidence that these remedies are effective in practice.

137. The Committee notes that the existing legal framework allows victims of pay discrimination to claim their right to equal pay. However, the Committee considers that in the absence of equal pay cases and indications of efforts deployed to address the remaining obstacles in practice, such as the complexity and length of proceedings, the obligation to ensure access to effective remedies has not been satisfied.

Pay transparency and job comparisons

138. 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.

139. 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.

140. 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).

141. 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.

142. Moreover, domestic law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important

means of ensuring that the equal pay principle is effective under certain circumstances, particularly in larger companies or specific sectors where the workforce is predominantly, or even exclusively, of one sex (see Statement of interpretation on Article 20, Conclusions 2012). The Committee considers notably that job comparisons should be possible across companies, where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

143. As regards pay transparency, the Committee notes from the European Network of Legal Experts on Gender Equality and Non-discrimination, Country Report on gender equality: Slovenia, 2018, that domestic case law does not specifically address wage transparency. The Committee further notes that Slovenia has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 of the European Commission on strengthening the principle of equal pay between men and women through transparency. The Committee understands that there is no obligation for employers to regularly report on pay and produce disaggregated data by gender.

144. The Committee observes that in its submissions UWE claims that the non-existence of a sound system of job classification in Slovenia has a negative impact on equal pay. The Committee notes that in the Government's submissions, there is no information concerning job classification systems and criteria used to establish equal value of work. The Committee notes from the above-mentioned Country Report from the European Network of Legal Experts on Gender Equality and Non-discrimination that domestic law does not lay down parameters for establishing the equal value of work performed.

145. The Committee notes in this respect from the Direct Request published 107th ILC session (2018) concerning ILO Convention No. 100 that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) underlined that inequalities may arise from the criteria and the methodology used to classify jobs, particularly the undervaluation of jobs in which women are overrepresented and from unequal access to allowances and benefits. Therefore, CEACR asked the Government to ensure that objective job evaluation methods and the criteria used are free from gender bias in the public sector pay system and that access to additional benefits is equal for men and women.

146. The CEACR also refers to a study and a manual by the Association of Free Trade Unions of Slovenia (AFTUS) and the Women Lobby of Slovenia entitled "Equal Pay for Equal Work and the Gender Pay Gap" and "Equal Pay for Equal Work or Work of Equal Value – Implementation Guide". The study found that pay differentials exist between men and women, including the level of basic pay, and while small at the national level, they rise in significance when examined at the level of the economic sector, occupational category or the job. According to the study, the gender pay gap is

caused by direct and indirect discrimination and by social and economic factors, including vertical and horizontal occupational gender segregation, undervaluation of women's work, inequalities with respect to reconciliation of work and family responsibilities, traditions and stereotypes.

147. The recommendations of the study and the implementation guide for addressing the obstacles to equal pay focus on the need to improve gender-neutral job evaluation in collective agreements and general acts of the employer, including the principle of non-discrimination, as well as on setting clear rewards criteria that facilitate gender neutrality, and accurate criteria for advancement across salary groups.

148. As regards job comparisons, the Committee notes from the above-mentioned Country Report from the European Network of Legal Experts on Gender Equality and Non-discrimination that as regards the question whether in relation to equal pay a comparator is required in national law, Article 1 of the the Act on the System of Salaries in the Public Sector (ASSPS) lays down the principle of equal pay for female and male workers in comparable posts and functions in the public sector and provides a legal basis for publicly divulging salaries in the public sector. However, the term comparable posts and functions in the ASSPS has not yet been interpreted by the courts and the term comparator has not yet been defined in domestic law. Domestic law does not lay down parameters for establishing the equal value of the work performed.

149. The Committee considers that due to the lack of information on comparable jobs and on the pay of fellow workers in comparable situations, it may be difficult for a potential victim of discrimination to start judicial proceedings in relation to discrimination before the courts. Moreover, the concept of work of equal value is not adequately defined. The Committee also notes in this respect that in its submissions, the Government has not contested UWE's allegation concerning the absence of clear criteria for job classification as well as a clear legal framework for job comparisons.

150. The Committee observes that there are several obstacles that may render the right of equal pay ineffective in practice. These include in particular the absence of a clear definition of equal work and work of equal value whether in legislation or in case law; lack of pay transparency, both as regards regular reporting by employers on pay and as regards access to information on the pay of a fellow worker in the context of judicial proceedings. Moreover, the Committee notes that it has not been shown whether the scope of job comparisons can extend outside the company directly concerned so as to include a group of companies owned by the same person or controlled by a holding or a conglomerate.

151. In view of the above, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons has not been satisfied.

Equality bodies and other institutions

152. The Committee considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (ICJ v. Portugal, Complaint No. 1/1998, op.cit., §32). The Committee has considered that measures to foster the full effectiveness of the efforts to combat discrimination include setting up of a specialised body to monitor and promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Article 1§2, Iceland). The status of such equality bodies in terms of their mandate, their independence and resources must be clearly defined. In this context, the Committee also has regard to the criteria for national human rights institutions set out in the so-called Paris Principles adopted in 1993 by the United Nations General Assembly.

153. 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.

154. 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.

155. 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.

156. The Committee notes from the European Network of Legal Experts on Gender Equality and Non-discrimination, Country Report on gender equality: Slovenia 2018 that the Advocate of the Principle of Equality provides independent assistance to victims of discrimination in claiming their rights to protection from discrimination. Legal assistance is provided by staff, some of whom are lawyers while others have a social sciences background.

157. The Advocate of the Principle of Equality has legal standing to bring discrimination complaints (on behalf of identified victims) to court or to intervene in legal cases concerning discrimination, under the conditions defined by law. It can also bring discrimination complaints ex officio to the Constitutional Court.

158. The Committee also notes that with the Protection Against Discrimination Act (PADA), the Advocate obtained some additional powers. The Advocate may henceforth conduct investigative procedures and has investigative powers, including to demand information from the opposing party in order to objectively determine facts and draw conclusions in each case.

159. The Committee observes that the Advocate of the Principle of Equality keeps statistics on the number of complaints of discrimination and decisions made, as well as the number of requests for assistance from persons who allege that they have been discriminated against (by ground, field, type of discrimination, etc.). The report for 2018 containing the registered number of complaints, decisions and requests for assistance was published in April 2019. The report shows that in 2018, the Advocate dealt with 223 cases, 149 of which were closed and 74 continued into 2019. Of the 149 closed cases, 4.7% related to gender. The Committee notes that no equal pay case has been reported or dealt with by the equality body. To the Government, the fact that there have been no equal pay complaints shows that this is not a pressing issue in Slovenia.

160. In its Concluding observations concerning Slovenia (2018), the Committee on Elimination of Discrimination against Women (CEDAW) recommends that Slovenia strengthen the authority and visibility of the national machinery for the advancement of women in the institutional structure and provide it with adequate human, technical and financial resources to enable it to effectively coordinate and promote the integration of a gender perspective into all policies and programmes across all sectors and levels of Government.

161. The Committee notes that the Advocate has the competence to examine individual complaints and represent victims in court. Moreover, as regards other functions within its mandate, on the basis of Article 21 of the PADA, the Advocate raises awareness among the general public about discrimination and measures for its prevention and monitors the general situation in Slovenia in the field of protection from discrimination.

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

Concluding assessment

163. Firstly, as regards the recognition of the right to equal pay, the Committee observes that the Employment Relationship Act guarantees equal treatment in employment and recognises the right to equal pay in its Section 133.

164. Secondly, as regards effectiveness of available remedies, the Committee considers that the scarcity of litigation on equal pay indicates that there are obstacles to women putting forward equal pay claims, such as the complexity and length of proceedings. It has not been shown that enough efforts have been deployed to address these obstacles.

165. Thirdly, as regards pay transparency and job comparisons, the Committee considers that due to the lack of pay transparency at company level, lack of access to pay information of a fellow worker and lack of information on comparable jobs, the obligations to ensure pay transparency and enable job comparisons have not been satisfied.

166. Finally, as regards equality bodies, the Committee considers that the mandate of the equality body is broad. It fulfils monitoring and decision-making functions and provides assistance to victims. Therefore, the obligation to maintain an effective equality body has been satisfied.

167. The Committee therefore holds that there is a violation of Articles 4§3 and 20.c of the Charter.

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

168. Article 20.c of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

...

c. terms of employment and working conditions, including remuneration; ...”

A – Arguments of the parties

1. The complainant organisation

169. UWE states that according to the Charter, the Governments must provide relevant statistical data, and compare the actual situation with the requirements to be achieved, the resources employed and the results obtained. Where the respondent state makes choices to include one or other criterion in its statistics and exclude others, it is an attempt to conceal greater wage inequality than it admits.

170. In this context, according to UWE, the respondent state's submissions include only very few relevant and reliable figures. UWE contends that to assess the reality of the pay gap, which is less favourable than the respondent state maintains, it must be corrected or refined with other indicators and data. The indicator which the Government relies upon is calculated on the basis of hourly wages and therefore 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, which, in almost half the cases, is not a choice, but is forced on them. Moreover, the statistics do not reflect the fact that although Slovenian women have higher levels of education and qualifications than men, they are under-represented in the most senior posts.

171. And finally, according to UWE, whether with regard to the gender pay gap or balanced representation of women and men in decision-making positions in private companies or in public bodies, a country should not use the pretext of its current position in relation to the European average for not having to make improvements in areas where its performance is only average.

172. UWE points to the shortcomings as concerns measures taken to promote equality and reduce the pay gap, such as the lack of gender mainstreaming in the policies concerned, as well as in decision-making, limited access to resources, procedures and practices, inadequate implementation, monitoring or evaluation. UWE points to the drawbacks in awareness-raising for all parties concerned with the issue of gender equality in employment, pay and positions of responsibility, as well as to insufficient funding for support measures, such as the promotion of work-life balance. UWE also alleges that the employment equality policy is not fully effective as there is no general framework.

173. UWE further maintains that the information provided by the respondent state is of a general nature and merely takes the form of a description of the legal and institutional framework, there being a general lack of clarifications which could serve to determine the conformity of the policies followed with the requirements of the Charter. Therefore, it is, according to UWE, difficult to assess the relevant powers, staffing levels, funding of administrative supervisory bodies, the efficiency of judicial regulation, the relevance and accuracy of the figures and statistics supplied, timetable for the measures introduced and the expected evaluation of the results within given timeframes.

2. The respondent Government

174. The Government underlines that it regularly monitors the status of women and men in all fields of social life, including the pay gap and unbalanced representation of women and men in decision-making positions in the business sector. It uses statistical data which are regularly updated and published, together with various analyses and research.

175. According to the Government, since understanding the situation is a prerequisite for taking measures, it is important to have suitable statistical data. The Statistical Office regularly displays data on wages by gender. The data on wages are presented by gender with respect to different variables (by activity, occupational group, education level, age, employment type etc.). The Agency for Public Legal Records and Related Services also undertakes statistical research every four years on wage structure for the needs of the Statistical Office. The data collected and presented for 2014 reveal that the average gross earnings for women was €1,478.34 and for men €1,566.61. On average, men earned more than women in all age brackets, except in the age bracket of 60 years and above.

176. According to the Government, on average, wages in the public sector are higher, and more women than men are employed in this sector. In 2016, the share of women in the public sector was 61.62 %. The average gross wage for women in the public sector was €1,672.26 in October 2014 and €1,898.55 for men, while women in the private sector earned €1,333.50 and men €1,463.28. In the public sector, the pay gap was 11.92 % and 8.87% in the private sector.

177. The Government indicates that in addition to the regular monitoring and publishing of data on the pay gap, studies and analyses on the gender pay gap have been undertaken which determined the situation in the field of women's and men's wages in more detail, also at the level of companies.

178. In response to UWE, who questions the relevance and accuracy of the figures and statistics supplied by the Government on the basis that they are mostly too broad or too limited, the Government maintains that it has supplied credible statistical data obtained from the competent institutions, such as the Statistical Office, the Labour Inspectorate, the Advocate of the principle of equality and the Human Rights ombudsperson. These data show that the problem of alleged unequal pay for women and men in Slovenia is not alarming, which, however, does not mean that the Government denies its existence and that it is not adopting measures to improve the situation.

179. The Government further rejects the allegation of UWE that women are much more often limited to part-time employment than men, not of their own choosing but because they are forced to do so. The Government rejects this claim as unsubstantiated, insofar as in reality, the share of women aged 20 to 64 working part-time was only 12.7% in 2016.

180. The Government admits that irrespective of the legally guaranteed right to equal pay for women and men, a pay gap between women and men exists in Slovenia, as in other countries. According to Eurostat, the relative difference in average gross hourly earnings of women and men was 8.1% in 2015.

181. In its submissions, the Government specifies the determinants of the pay gap as follows. First, women and men frequently do different work and are employed in different sectors. Second, they receive different treatment in workplaces, i.e. regarding professional promotion and training. Third, customs and traditional understandings of gender affect people's decisions when choosing occupations and employment. Fourth, women bear a greater burden of unpaid work and childcare etc. Fifth, women work fewer hours per month. According to the Government, in October 2014 women worked on average of four hours less than men. If gross hourly wages for men and women are compared, it is evident that the pay gap will be smaller. In October 2014, men's gross hourly wage was €8.65 and women's gross hourly wage was €8.35, thus the pay gap was 3.46%.

182. According to the Government, the objective of increasing the share of women and men in professions and activities where they are in a minority was intended to contribute to reducing the difference in pay between women and men. To realise this objective the following measures are implemented: first, measures to eliminate gender stereotypes when young people are deciding on an occupation and second, projects and programmes to encourage women and men to choose non-traditional occupations and employment, particularly in high-potential sectors.

183. The Government contends that in spite of the relatively small pay gap, it dedicates special attention to eliminating differences in wages for women and men. Various approaches and measures are in force to eliminate segregation in the labour market, abolish stereotypes, promote the reconciliation of professional and private or family life and encourage a culture of equality in the workplace.

184. The Government maintains that since one of the reasons for the pay gap between women and men is the imbalance between work and private life, because women still do most of the family work, i.e. housework, care for children and elderly family members, the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men has included two objectives: firstly to increase the share of fathers who take parental leave and sick leave to care for family members and who work part-time due to parenting and secondly to eliminate stereotypes about gender roles in society, family and relationships and to facilitate a more equal division of labour regarding care and housework. Moreover, according to the Government, since one of the obstacles to balanced gender representation in decision-making positions in the business sector is also the unbalanced distribution of care and household chores between partners, measures have also been taken to address this issue. Between 2016 and 2017, in cooperation with many local institutions and the Icelandic Centre for Gender Equality, the "Active Everyone" project was implemented.

The project tackles the entire array of gender stereotypes which directly or indirectly hinder progress in this field. Thus, activities to promote active fatherhood were implemented for children in kindergartens and schools, parents, expert workers in local self-government and social services, health care, education and schooling, political decision-makers, employers and trade unions have been implemented during the course of this project. Promotional videos were made, including a documentary film presenting social changes concerning fatherhood and using positive examples to encourage men to be active fathers.

185. The Government also states that a handbook on the realisation of the right to equal pay was issued, prepared by the Association of Free Trade Unions of Slovenia in cooperation with the Women's Lobby of Slovenia based on a study on Equal Pay for Equal Work and the Gender pay gap. The handbook provides examples of the gender pay gap in Slovenia, including possible solutions and instructions to employees on how to take action.

186. In addition to the above, the Ministry of Labour, Family, Social Affairs and Equal Opportunities called for tenders for projects aimed at the reconciliation of private and professional life, with an emphasis on active fatherhood, in its regular call for co-financing NGO projects in 2017.

B – Assessment of the Committee

a) Key figures as regards equal pay in Slovenia

187. As regards Slovenia, according to Eurostat, the pay gap stood at 8.1% in 2015, while the EU-28 average was 16.2%. In 2016 the pay gap in Slovenia stood at 7.8% while that of the EU-28 remained at 16.2%. In 2017 the gender pay gap in Slovenia was 8%, while it was 16% in the EU. The overall earnings gap in 2014 was 19.6%. The adjusted or “unexplained” gender pay gap was at 15.5% compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study “A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, 2018).

b) Collection of data on equal pay and measures to promote equal opportunities

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 notes from the Concluding observations on the combined fifth and sixth periodic reports of Slovenia that according to the Committee on the Elimination of Discrimination against women (CEDAW), there is a significant pay gap in traditionally female-dominated sectors, such as human health and social work activities (25.1%) or financial and insurances activities (24.8 %), and there is limited access for women to skilled and better-paid jobs.

196. The Committee notes from the Direct Request (2017) by CEACR concerning Slovenia in relation to ILO Convention No. 100 that the statistics indicate significant horizontal occupational gender segregation, particularly in human health and social work activities (80.8% of workers are women) and education (78.9 % of workers are women), while in the mining and quarrying industry, 91.5% of workers are men; and in the construction industry 88.3% of workers are men.

197. The Committee notes that despite the relatively small gender pay gap, the Government has taken steps to implement targeted measures to address such issues as gender stereotyping and the imbalance between work and private life.

198. The Committee observes that the Government has collected and analysed data and provided statistics regarding the situation of women in the labour market. The Committee notes in particular that the Government has made an effort to identify and analyse the main determinants of the pay gap and indicate what measures have been taken to address some of them (for gender stereotyping, measures include promoting

active fatherhood, as well as raising awareness about reconciliation of private and professional life).

199. The Committee also observes that the gender pay gap as an indicator of the effectiveness of these measures is low in relative terms. However, the Committee notes that the gap, although still at a level which falls below the EU average, has been steadily rising since 2010 when it stood at 0.9%. Therefore, the Committee considers that the measures taken to promote equal opportunities in the labour market with regard to equal pay have not been sufficient.

200. 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 there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

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

201. Article 20.d of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

d. career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

202. According to UWE the equal representation of women in decision-making is vital in order to bring about equal pay for women and men for equal, similar or comparable work. In this respect, UWE claims that there appears to be no legal provision to promote female membership of company boards in Slovenia. Only 21% of the members of the boards of large listed companies in Slovenia are women. All the CEOs are men but 10.5% of board chairs are women.

203. According to UWE, Slovenia does not have a binding mechanism to foster representation of women on the boards of the largest private companies. UWE also refers to ETUC who states that there is no regulatory framework on representation of

women in decision-making position in private enterprises. However, the Corporate Governance Code (revised in 2016) sets a principle of gender balance for the composition of listed companies' boards.

2. The respondent Government

204. According to the Government, balanced representation of women and men in decision-making positions is one of the eight priorities defined in the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men. The data reveal that the share of women in decision-making positions in the business sector in Slovenia is low, but still higher than the average in EU countries (chairs and board members).

205. The Government admits that despite the legislation prohibiting unequal treatment on the basis of gender, women remain under-represented in decision-making positions. The Ministry of Labour, Family, Social Affairs and Equal Opportunities initiated two major research studies in recent years on the issue of the balanced representation of women and men in decision-making positions in the business sector. The first study examined the differences in career paths of female and male managers and their views on male and female equality in the business sector. The second study examined the importance of transparent staffing for achieving a balanced representation of women and men in decision-making positions. Both studies highlighted those fields in which the situation is not yet satisfactory, such as certain social and organisational factors that hinder the promotion of women to the highest positions, the fact that men predominate in the highest positions in the private sector, whereas the situation is more balanced in the public sector. According to the Government, other research findings have revealed that an equal distribution of household chores was not understood as an element of an equal partnership; that care for children was still primarily the task of women; that men should relieve women of household chores and child care and assume their share of work; that the employers' lack of understanding is an obstacle to men assuming more domestic obligations; that women are less likely to be promoted to management positions than men; and that women in leading positions must make many sacrifices.

206. The Government further indicates that the objective of increasing the share of women in executive and managerial positions in the business sector was defined in the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men for the balanced representation of women and men in the business sector. The measures to attain the objective include the enactment of legislation which promotes the balanced representation of women and men in decision-making positions in companies, the implementation of programmes and projects encouraging women to take the highest positions in companies, and raising awareness about the importance of balanced representation in the highest positions in the business sector.

207. According to the Government, the Companies Act determines that large companies which are subject to auditing must include corporate governance statements in their business reports. The statement must, inter alia, include the description of the diversity policy implemented regarding representation in management and supervisory bodies of companies from the viewpoint of gender and other aspects, e.g. age, education, professional experience, provision of objectives, the manner of implementation and results obtained from the diversity policy in the reporting period. If a company does not have a diversity policy, this is explained in the corporate governance statement.

208. In order to realise balanced gender representation in decision-making positions in the business sector, an expert working group was established in 2016, which prepared an analysis of the situation and bases for legally regulating this matter. The analysis of the situation revealed that because of the generally small management boards in Slovenia (2.6 members on average), it would be sensible to adopt measures for balanced representation in decision-making positions for executive and non-executive posts together. However, according to the Government, the aforementioned leads to many problems in practice, because in accordance with the Slovenian legislation shareholders are not permitted to agree in advance on appointments to supervisory boards, since they would thus lose their voting rights. Varying methods of appointing members to supervisory and management bodies (from elections to appointments according to function) present an additional problem. Only some 50 companies in Slovenia could based on their size be considered subject to the statutory regulation of a minimum share of women and men in decision-making positions.

209. The Government closes its submissions by referring to the fact that although a gender pay gap exists in Slovenia, it is among the smallest in Europe and the world (the gap in gross hourly earnings of women and men was 3.46% in 2014), and the share of women in decision-making positions in the business sector in Slovenia is higher than the EU average. The Government strives to achieve progress and the realisation of gender equality in practice, including the provision of equal pay for women and men and balanced gender representation in decision-making positions in the business sector, and has been implementing various measures and activities for this purpose.

B – Assessment of the Committee

210. 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).

211. 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%.

212. 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.

213. As regards Slovenia, according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, in 2010 the representation of women on the boards of the largest listed companies stood at 9.8% and at 23.9% in 2016 against the EU average of 23.3%. In 2018 women were represented by 27.9% on the boards and by 27.7% in 2019 (EU average in 2019 stood at 27.8%). A self-regulation exists on state-owned companies, which sets a target of 40% representation of each gender that applies to the nomination or appointment of Government representatives to management and supervisory boards of state-owned enterprises (executive and non-executive). No sanctions apply if the principle is not respected.

214. The Committee notes from the Concluding Observations of the Human Rights Committee (HRC) regarding Slovenia that as regards participation of women, the HRC remains concerned that women continue to be under-represented in senior and managerial positions and on boards of private enterprises. Therefore, Slovenia is encouraged to support further the participation of women in senior and managerial positions and on the boards of private enterprises, including through enhanced cooperation and dialogue with partners in the private sector. The HRC recommends that the State party expedite the preparation and adoption of measures, including temporary special measures, such as gender quotas, to increase the representation of women in management and on supervisory boards of companies.

215. The Committee notes that the Government has acknowledged the fact that women are under-represented in decision-making positions, especially in the private

sector. The Committee notes in this respect that the Government has taken steps to analyse the causes of this under-representation with a view to designing policy instruments and measures to address the problem. One of these measures has been to prioritise this issue in the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men, which envisages enactment of legislation to promote the balanced representation of women and men in decision-making positions in companies as well as raising awareness about the importance of balanced representation of women in the highest positions in the business sector. The Committee also notes that a working group has been set up, which has prepared an analysis of the situation and a basis for the possible legislation action in the field.

216. The Committee considers that the Government has taken measures to meet its positive obligation to tackle vertical segregation in the labour market. The Committee notes that the representation of women on boards of private companies has risen from 21.5% in 2015 to 27.7% in 2019, which shows a clear trend for improvement in such representation in recent years.

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

IV. REQUEST FOR COMPENSATION

218. The Committee decides not to make a recommendation to the Committee of Ministers as regards the complainant's request for a payment of €10,000 in compensation for legal costs incurred in connection with the proceedings. It refers in this respect to the stance taken by the Committee of Ministers in the past (see Resolution CM/ResChS(2016)4 in *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013) and to the letter of the President of the Committee addressed to the Committee of Ministers dated 3 February 2017 in which the President announced that the Committee would for the time being refrain from inviting the Committee of Ministers to recommend reimbursement of costs.

219. 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 legislation;
 - by 13 votes to 2, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that access to effective remedies is not ensured;
 - unanimously that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency has not been ensured and job comparisons have not been enabled;
 - by 12 votes to 3 that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies.
- unanimously, that there is a violation of Article 20.c of the Charter on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- by 12 votes to 3, 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.



Kristine DUPATE
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary