



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

27 March 2018

Case Document No. 8

University Women of Europe (UWE) v. Slovenia
Complaint No. 137/2016

**FURTHER RESPONSE FROM THE GOVERNMENT
ON THE MERITS**

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REPUBLIC OF SLOVENIA
MINISTRY OF LABOUR, FAMILY
SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

**Response by the Government of the Republic of Slovenia to the UWE's Reply
to the Opinion of the Republic of Slovenia as per paragraph one of Article 7 of
the Additional Protocol to the European Social Charter Providing for a System
of Collective Complaints**

**University Women of Europe (UWE)
v. Slovenia**

Complaint No. 137/2016

Ljubljana, 15 March 2018

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I. Introduction and summary of the procedure

1. The European Social Charter (Revised) (hereinafter: RESC) was adopted by the Council of Europe in 1996. The Republic of Slovenia signed the RESC on 11 October 1997; upon ratification, the act was adopted by the National Assembly of the Republic of Slovenia on 11 March 1999 (Official Gazette of the Republic of Slovenia [Uradni list RS] – International Treaties, No. 7/99). The Charter was ratified on 7 May 1999 and entered into force on 1 July 1999. In addition to the ratification of the RESC, the Republic of Slovenia also assumed responsibility for monitoring the commitments in the RESC as per the procedure determined by the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter: Additional Protocol).
2. The University Women of Europe (hereinafter: UWE) is an international non-governmental organisation with its headquarters in Geneva, which is on the list of organisations with consultative status to the Council of Europe. On 24 August 2016, the UWE lodged a collective complaint against Slovenia under Article 5 of the Additional Protocol. The UWE claims that Slovenia violated Articles 1, 4 and 20 in connection with Article E of the RESC due to the existence of a pay gap between men and women and low representation of women in decision-making positions in private companies. As per Article 5 of the Additional Protocol, the Secretary General informed Slovenia thereof and forwarded the collective complaint to the European Committee of Social Rights (committee of independent experts; hereinafter: ECSR). In accordance with Article 6 of the Additional Protocol, the ECSR asked Slovenia on 27 September 2016 to submit its written observations on the admissibility of the collective complaint by 4 November 2016. At the request of the Republic of Slovenia, the deadline for the submission of its observations on the admissibility was extended to 15 December 2016.
3. At the request of the European Committee of Social Rights as per Article 6 of the Additional Protocol, the Government of the Republic of Slovenia adopted the Opinion of the Republic of Slovenia at its 114th regular session on 14 December 2016 on the basis of Article 6 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in the procedure of establishing the admissibility of the collective complaint of the UWE against Slovenia. The opinion states that the UWE's complaint against Slovenia was unclear and unfounded, since the complainant failed to state in regard to what Slovenia had failed to ensure sufficient application of the relevant provisions of the RESC. Relevant Slovenian legislation is namely in conformity with the RESC, and statistical data reveal that the pay gap between men and women in Slovenia is among smallest in Europe and the world.
4. At its 293rd session on 4 July 2017, the European Committee of Social Rights decided that the collective complaint filed by the UWE against Slovenia was admissible. The Committee asked the Government of the Republic of Slovenia to provide an opinion on the content of the collective complaint filed by the UWE against Slovenia by 13 October 2017. At its 152nd regular session on 12 October 2017 the Government of the Republic of Slovenia adopted the Opinion of the Republic of Slovenia as per paragraph one of Article 7 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. In this opinion the Government states that the existing legislative framework, findings from the practice of the Labour Inspectorate of the Republic of Slovenia, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts, including implemented and planned activities of the Government of the Republic of Slovenia aimed at realising gender equality in practice cannot constitute violations of Articles 1, 4 and 20 in connection with Article E of the RESC, and it thus proposed the European Committee of Social Rights to declare the collective complaint of the UWE against the Republic of Slovenia unfounded.

5. In the UWE's collective complaints procedure against Slovenia the European Trade Union Confederation (ETUC) intervened and on 3 November 2018 it submitted its observations to the European Committee of Social Rights.
6. The European Committee of Social Rights called upon the UWE to respond to the Opinion of the Government of the Republic of Slovenia as per paragraph 1 of Article 7 of the Additional Protocol. The deadline was set at 21 December 2017, but on the request of the UWE it was extended to 12 January 2018. The UWE prepared a reply to the Opinion of the Government of the Republic of Slovenia on the content of the complaint within the deadline. In this response the Government of the Republic of Slovenia responds to the UWE's reply of 12 January 2018.

II. Comment on the UWE's reply to the arguments of the Republic of Slovenia

The Government of the Republic of Slovenia again rejects in its entirety the UWE's complaints on the alleged violation of Articles 1, 4 and 20 in connection with Article E of the RESC for the reasons that have already been submitted and substantiated in the Opinion of the Government of the Republic of Slovenia as per paragraph 1 of Article 7 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 12 October 2017:

- a) the pay gap between men and women in Slovenia is among smallest in Europe and the world, and the share of women in decision-making positions in the business sector is higher than the average in the EU countries;
- b) the relevant Slovenian legislation is in conformity with the requirements of the RESC's provisions; supervisory mechanisms are in place in the Republic of Slovenia and are available to everyone free of charge and in a simple manner. The Government of the Republic of Slovenia highlights that it was not possible to ascertain from the practice of the IRSD, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts whether the issue of unequal pay for women and men for equal work and for work of equal value was topical in the Republic of Slovenia;
- c) the Government of the Republic of Slovenia regularly monitors the status of women and men in all fields of social life, including the pay gap and unbalanced gender representation in decision-making positions in the business sector, whereby it uses statistical data which are regularly updated and published, together with different analyses and research studies. On the basis of the established situation, the Government forms and implements measures and activities to realise gender equality in individual fields of social life;
- d) The Government of the Republic of Slovenia emphasises that it received no finding from the European Committee of Social Rights between 2002 and 2016 in which violations of Articles 1, 4 or 20 of the RESC, as alleged by the UWE in the relevant collective complaint, could be established. At this point, the Government of the Republic of Slovenia highlights the complementary nature of the system of collective complaints, as provided in paragraph two of the Explanatory Report to the Additional Protocol (1995): "The system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter."

In addition, the Government of the Republic of Slovenia submits comments on the irrelevant and/or false statements made by the UWE in its reply of 12 January 2018:

- *"... De plus, ce pays met en avant qu'il a répondu de manière satisfaisante aux trois ou quatre demandes de compléments formulés par le Comité. Mais le Comité n'a pas demandé de compléments d'autres sujets qui en requéraient. Aussi bien les observations présentées à ce sujet par la Finlande doivent-elles être regardées comme dépourvues de pertinence."*
(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 6)¹

The Government notes that the text under point 2.1 Conclusions on non-conformity is not relevant for Slovenia, as it obviously refers to Finland and should therefore not be taken into consideration.

¹ The Government points out that the English translation in this part is not identical to the French original.

- "...Les plaignants doivent en outre se voir garantir contre toute espèce de mesures de rétorsion. Ignorer ces mesures de rétorsion si banales et communes au quotidien, c'est bien mal connaître ces questions dans la pratique quotidienne de la vie d'une salariée."
(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 7)

The Government of the Republic of Slovenia rejects the allegation regarding the absence of protection against various retaliatory measures. The Employment Relationships Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, and 15/17 – Constitutional Court Decision, hereinafter: the ZDR-1) indeed 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 fulfilling the prohibition of discrimination (see paragraph 7 of Article 6 of the ZDR-1). Protection against retaliatory measures is thus provided for at the legislative level, while the worker's enforcement of rights with the employer and access to judicial protection are defined in Article 200 of the ZDR-1². The aforementioned provision may also be subject to inspection supervision, since pursuant to Article 215 of the ZDR-1 inspection supervision of implementation of the provisions of this Act and the implementing regulations, collective agreements and general acts of employers which govern employment relationships are performed by the Labour Inspectorate in accordance with the regulations governing inspection supervision.

In view of the aforementioned, there is no absence of protection against various retaliatory measures, in fact quite the contrary is true – multiple protections against these measures are provided.

- *“Or en l'espèce, les informations fournies par l'État défendeur, et c'est un paradoxe que les observations produites à l'encontre des réclamations en débat dénoncent le caractère général de celles-ci alors que lui-même s'en tient la plupart du temps à des généralités, persistent à revêtir un caractère essentiellement descriptif du cadre juridique et institutionnel, les précisions qui permettraient d'établir la conformité des politiques suivies aux exigences de la Charte font très largement défaut. Elles manquent en particulier à permettre une appréciation éclairée :*
 - *Des pouvoirs, des effectifs, des volumes de diligences, des dotations financières, des instances administratives de contrôles*
 - *De l'efficacité de la régulation juridictionnelle, procédures, coût, indépendance, fiabilité*
 - *De l'ampleur des politiques d'accompagnement et de sensibilisation et de leur proportionnalité au regard de la lourdeur des stéréotypes qu'il faudrait éradiquer*
 - *De la pertinence et de la sincérité des données chiffrées et statistiques produites, quand il en a été produit, la plupart du temps trop globales ou trop partielles alors qu'existent des documents publics émanant de l'une fournissant des informations plus fines ou plus étendues*
 - *Aucun calendrier des mesures mises en place, l'évaluation attendue des résultats, dans des délais précis*
 - *La jurisprudence dans ce pays n'a pas d'impact puisque quasi inexistante.”*

(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 8)

² **Article 200 of the ZDR-1 (Enforcement of rights at the employer and judicial protection)**

(1) If a worker is of the opinion that the employer has failed to fulfil their obligations arising from the employment relationship or that they have violated any of the worker's rights arising from the employment relationship, the worker shall have the right to request in writing that the employer eliminate the violation and/or fulfil their obligations.

(2) If the employer fails to fulfil their obligations arising from the employment relationship 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 of the expiry of the time limit set for the fulfilment of obligations and/or elimination of violation by the employer.

(3) A worker may request before the competent labour court the establishment of illegality of cancellation of the employment contract, of other modes of termination of the employment contract, and/or of decisions on disciplinary responsibility of the worker within 30 days of the day of service or the day when the worker learned about the violation of such right.

(4) Notwithstanding the time limit referred to in the second paragraph of this Article, a worker may enforce claims for money arising from the employment relationship directly before the competent labour court.

(5) A candidate who has not been selected and who is of the opinion that in the selection process the statutory prohibition of discrimination has been violated may request judicial protection before the competent labour court within 30 days of the day of receipt of the employer's notification.

The Government rejects the allegations regarding the general observations and the absence of clarifications that allegedly prevent the establishment of conformity with the requirements of the RESC. In its opinion of 12 October 2017 the Government of the Republic of Slovenia stated credible statistical data of the Statistical Office of the Republic of Slovenia and other relevant data obtained from the competent institutions (the Labour Inspectorate of the Republic of Slovenia, the Advocate of the Principle of Equality, the Human Rights Ombudsman of the Republic of Slovenia, courts). 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 of the Republic of Slovenia denies its existence and that it is not adopting measures to improve the situation.

Key policies, goals and measures for providing gender equality are clearly stated in the Resolution on the 2015–2020 National Programme for Equal Opportunities for Women and Men (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 84/15); on its basis two-year periodical plans are being adopted which define in even greater detail the tasks and the time frame within individual measures leading to the achievement of the set goals. The implementation of each National Programme and of the periodical plans is regularly monitored and upon the conclusion of the National Programme it is appropriately evaluated. The evaluation of the previous National Programme, the current National Programme, the periodical plan and other documents are publicly available on the following website: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zakonodaja_in_dokumenti/nacionalni_program_za_enake_moznosti_zensk_in_moskih_2005_2013/#c19421.

There are different reasons for the pay gap: the value placed on work, segregation, stereotypes and the harmonisation of professional and private life. As established in research (Penner, Kanjuo Mrčela, Bandelj, Petersen: Neenakost po spolu v Sloveniji od 1993 do 2007: Razlike v plačah v perspektivi ekonomske sociologije – Gender Inequality in Slovenia from 1993 to 2007: Pay Gaps from the Perspective of Economic Sociology), reasons for the pay gap between women and men in Slovenia should be sought in particular in the cultural expectations for the high inclusion of women in the sphere of paid work and in the traditional division of gender roles in private life. Therefore, it is the measures and activities focused on the recognition and elimination of gender stereotypes and a more balanced division of care responsibilities that can contribute to the decrease in gender segregation and consequently to the reduction of the pay gap between men and women.

In recent years, the Republic of Slovenia has devoted special attention in particular to the recognition and elimination of gender stereotypes that prevent women from realizing all their potentials. Within the project entitled "**Uravnotežimo odnose moči med spoloma (Let's Balance Gender Power Relationships)**", co-financed from the EEA Financial Mechanism Programme and the Norwegian Financial Mechanism Programme (2013-2016), an extensive media campaign was carried out with the aim of raising awareness of the existence of gender stereotypes and imbalances in power relationships between women and men. The project "**Aktivni.Vsi**", co-financed from European Commission funds for the REC programme (the Rights, Equality and Citizenship Programme), encouraged active fatherhood and addressed gender stereotypes. In order to encourage fathers to get more involved in care work and childcare during the earliest childhood period of their children, paternity leave legislation was amended. As from 1 January 2018 fathers are not only entitled to 15 calendar days of paid paternity leave, which must be taken before the child reaches the age of six months, but also to an additional 15 calendar days of paid paternity leave which they must take in straight succession after the end of parental leave, but before the end of the child's first year of primary school.

The Government of the Republic of Slovenia reiterates that it has adopted all the necessary measures to facilitate access to labour courts and to also provide this access free of charge for socially disadvantaged people.

- "**La protection contre les discriminations ne fonctionne pas convenablement**" (REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 10)

The Government of the Republic of Slovenia points out that it is not competent to interfere with the work of institutions encouraging gender equality (Advocate of the Principle of Equality and the Human Rights Ombudsman of the Republic of Slovenia). As an institution, the Advocate of the Principle of Equality is an independent body and is competent to act in the private and public sectors. The Advocate of the Principle of Equality has the status of a high official and is appointed by the National Assembly of the Republic of Slovenia on the proposal of the President of the Republic of Slovenia. For the year 2018,

the budget of the Advocate of the Principle of Equality amounts to EUR 500,000, which means that it has increased by more than 100% in comparison to 2016, when it amounted to EUR 200,000.

- *“La tonalité de ces affirmations est inquiétante. Aucune action en justice, aucune dénonciation sur les griefs, donc aucune violation de la Charte sociale. Plus que comme une preuve de l'absence d'inégalité et de discrimination, cette absence d'actions, de dénonciations d'irrégularités en matière salariale apparaît comme la preuve d'une occultation de ces inégalités, liées probablement à une sorte de dissuasion implicite ou explicite à l'égard des femmes qui en sont victimes.”*

(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 11)

The Government of the Republic of Slovenia rejects in its entirety the allegations of concealing inequalities. The conclusions made by the complainant regarding the absence of facts cannot directly confirm the existence of another fact or several facts; it is only an assumption that still must be confirmed or refuted.

In this respect, the Government adds that most of the reports dealt with by the Labour Inspectorate of the Republic of Slovenia refer to salaries. According to the Labour Inspectorate of the Republic of Slovenia, 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 payment.

- *“... c'est le manque d'intérêt des syndicats pour l'égalité salariale entre les femmes et les hommes”.*

(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 11)

The Government of the Republic of Slovenia agrees with the complainant's statement on the alleged lack of interest by trade unions in equal pay for women and men. The Government of the Republic of Slovenia is of the opinion that this lack reflects the trade unions' understanding of the issue of unequal pay for women and men in Slovenia, which is – as stated by the Government in this procedure – not really a pressing issue. Trade unions, however, carry out important activities aimed at improving this situation (the Slovenian Association of Free Trade Unions issued, for example, a Handbook on the enforcement of the right to equal pay).

The allegations of the complainant regarding the leadership structure in large trade union associations and employer organisations in Slovenia are untrue, because the leadership of the Slovenian Association of Free Trade Unions, which is also a member of the European Trade Union Confederation, is represented by as many as five (5) women and one (1) man. Further details are available at: <https://www.zsss.si/o-nas/kdo-smo/>. Even in the largest employer organisation, the Chamber of Commerce and Industry of Slovenia, the Management Board is composed of two women and one man (further details on the structure are available at https://www.gzs.si/o_gzs/vsebinska/Organizacija-GZS/Upravni-odbor-GZS).

- *“Il n'est pas davantage acceptable, qu'un pays entende tirer prétexte de ce qu'il se situerait au-dessous de la moyenne européenne, pour être tenu quitte d'efforts propres à améliorer sa position par rapport aux accomplissements moyens.”*

(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 13)

The Government notes that the complainant's conclusions are wrong. Slovenia is submitting solely official statistical data, although it is also citing measures through which it wishes to improve the situation; this is a clear sign of its efforts towards improvement, therefore the complainant's opinion should not be taken into consideration.

- *“l'Etat défendeur développe une thèse pour partie intrinsèquement contradictoire, pour partie incompatible avec les thèses soutenues par les autres pays... C'est pourquoi pour cerner la réalité de ce «pay gap» qui n'est pas aussi bon que l'affirme l'Etat défendeur, il doit être corrigé ou affiné par d'autres indicateurs et données. L'indicateur sur lequel se fonde le gouvernement est calculé sur la base des salaires horaires et ne révèle donc pas les inégalités de salaires liées au fait que les femmes sont beaucoup plus souvent cantonnées dans des emplois à temps*

partiel que les hommes dans près de la moitié des cas, n'est pas choisi mais contraint. Et que les femmes slovènes bien qu'ayant un niveau d'instruction et de qualifications plus élevé que les hommes sont dans des proportions inférieures au niveau des postes les plus élevés."
(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 14-15)

The Government of the Republic of Slovenia rejects the allegation of the complainant that "*.. in almost half of the cases women are much more often limited to part-time employment than men, however, not of their own choosing but because they are forced to do so*", because this is an unsubstantiated belief of the complainant that should not be taken into consideration. In Slovenia, the share of women aged 20 to 64 working part-time is 12.7% (in 2016).³ In just 16.7% of cases the reason why women work part-time is that they do not secure full-time employment, meaning that they have not freely decided to do so.⁴

- *"Un double plafond de verre et un mur d'enceinte « ainsi qu' « un plancher collant » sont les expressions imagées pour décrire les difficultés des femmes de cet Etat pour accéder à des postes décisionnaires dans les entreprises hors les conseils d'administration. L'État défendeur ne s'intéresse pas à cette question ainsi qu'il l'indique dans ses observations. L'absence de femmes dans les postes de décisions est prouvée. Cette discrimination est caractérisée et va à l'encontre des divers engagements pris par la Slovénie à cet égard. La Slovénie viole la Charte Sociale sur ce grief de sous représentation des femmes dans les postes de décision économique."*
(REPLIQUE AUX OBSERVATIONS SUR LE BIEN FONDÉ, p. 20)

The Government of the Republic of Slovenia firmly rejects the allegation of the complainant that the State is not interested in the issue of women's access to decision-making positions. In the Opinion of the Government of the Republic of Slovenia of 12 October 2017 the Government explained in detail its efforts towards balancing the representation of both genders in decision-making positions. Proof of the Government's efforts to improve the situation can be seen in the fact that the Act Amending the Equal Opportunities for Women and Men Act is currently under consideration in the National Assembly of the Republic of Slovenia. The Act lays down the minimum share of each gender (40%) for the appointment of female and male representatives of the Government of the Republic of Slovenia in public companies and in other bodies governed by public law.

III. Costs of proceedings

The Government of the Republic of Slovenia reiterates its position that the applicable Additional Protocol has no legal basis for reimbursing the costs of collective complaints procedure, which was also determined by the Committee of Ministers in its resolution on collective complaint No. 100/2013. The Government of the Republic of Slovenia stresses that the mechanism of collective complaints as governed by the Additional Protocol is by no means a judicial procedure, and the ECSR is not a judicial authority; similarly, the parties to the collective complaint procedure cannot be understood as parties to judicial proceedings, which would imply the need to determine the costs of proceedings.

The Government of the Republic of Slovenia believes that by deciding on the costs of proceedings, the ECSR would act outside its powers granted as per the Additional Protocol, and the Government thus suggests to the ECSR that it clearly state the absence of a legal basis for reimbursing the costs of proceedings in its final decision.

³ Source: Eurostat, Part-time employment as percentage of the total employment by sex and age (%) [lfsa_eppga]

⁴ Source: Eurostat, Main reason for part-time employment - Distributions by sex and age (%) [lfsa_epgar]

IV. Conclusion

The Government of the Republic of Slovenia reiterates that:

- it regularly monitors statistical data on gender equality;
- it is aware of the existence of a pay gap between men and women and endeavours to eliminate it;
- it is aware of the existence of unbalanced representation of women and men in decision-making positions and aims to provide a better balance;
- it ordered and/or carried out a series of surveys with the purpose of establishing which factors have an impact on the occurrence of the pay gap and unbalanced representation and developing appropriate measures for the elimination of gender inequality in these fields;
- it has developed and adopted, in addition to the required legislative measures, a series of other measures to achieve gender equality in practice, including the provision of equal pay for women and men and balanced gender representation in decision-making positions;
- the **Resolution on the 2015–2020 National Programme for Equal Opportunities for Women and Men** (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 84/15) clearly defines the objectives and measures that will contribute to reducing the pay gap between women and men and to enhancing the share of women in decision-making positions in the business sector; apart from the objectives and measures the Resolution also foresees financial resources for the implementation of measures and indicators for monitoring progress in the implementation of the set objectives;

and this can by no means constitute a violation of the RESC, since all conditions for the assessment of conformity with the RESC to which the complainant refers (page 6, *Mouvement International ATD Quart Monde v. France*, complaint No. 33/2006, 5 December 2007, points 60 to 67) have been complied with.

Despite the fact that the desired objectives have not (yet) been reached, the described legislative framework, the practice with supervisory mechanisms and statistical data show that the Government of the Republic of Slovenia is endeavouring to provide gender equality, including equal pay and balanced representation in decision-making positions. The Government therefore proposes to the European Committee for Social Rights that it declare the collective complaint of the UWE against Slovenia unfounded.


Andraž Bobovnik



HEAD OF THE DELEGATION ACTING AS THE
AGENT FOR THE GOVERNMENT OF SLOVENIA

Ljubljana, 12 March 2018