

DECISION ON ADMISSIBILITY

4 July 2017

University Women of Europe v. the Netherlands

Complaint No. 134/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 293rd session in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 24 August 2016 as number 134/2016, lodged by University Women of Europe (“UWE”) and signed by Ms Anne Nègre, a lawyer appointed by the President of UWE, Ms Edith Lommerse, requesting the Committee to find that the situation in the Netherlands is not in conformity with Articles 1, 4, 4§3 and 20 of the Revised European Social Charter (“the Charter”), read alone or in conjunction with Article E, as well as the 1961 Charter and Article 1 of the 1988 Additional Protocol; the complaint was notified to the Government of the Netherlands (“the Government”) on 27 September 2016;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government on the admissibility of the complaint registered on 29 November 2016;

Having regard to the response submitted by UWE to the Government's written observations on 20 March 2017;

Having regard to the additional observations of the Government registered on 15 May 2017;

Having regard to the Charter, and in particular to Articles 1, 4, 20 and E, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

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:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

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:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.”

Article E – Non-discrimination

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

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 4 July 2017;

Delivers the following decision, adopted on the above-mentioned date:

1. UWE alleges that the situation in the Netherlands constitutes a violation of Articles 1, 4, 4§3, 20 and E of the Charter, as well as the 1961 Charter and Article 1 of the 1988 Additional Protocol. UWE invokes the following grounds:

- a) The first concerns the wage gap between men and women in the Netherlands, which still persists and is unfavourable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation enacted in this area. In this respect, UWE also alleges that, in practice, the bodies which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfil their task, thus rendering existing legislation ineffective. UWE cites the work in particular of the Ombudsman (Netherlands Institute for Human Rights, in which is integrated the Equal Treatment Commission) and the labour inspectorate;

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, in spite of the existing legislation, as it imposes a 30% quota, but does not impose sanctions it not respected.

2. In its observations, the Government objects to the admissibility of the complaint. It states, notably, that as the complaint has been lodged against the 15 States having accepted the collective complaints procedure, its content does not adequately address the specifics of the national context. The complaint is not precise enough to grounds the case against the Netherlands, and is therefore too vague and general, as it could concern all European women. For these reasons, the draft seems more a political manifesto than a complaint.

3. In its response to the Government's objections, UWE states that it invokes national legislation in the complaint and that it addresses the wage gap existing in the Netherlands. The fact that complaints have been lodged against the other 14 States having accepted the complaints procedure is not relevant for the assessment of admissibility. No text prohibits invoking the same grounds against different States at the same time, mainly in the field of wage discrimination. Finally, the complaint refers to legal and factual elements to substantiate its allegations, and it is not a political manifesto.

4. In its additional observations, the Government states that the complaint is general and vague and seems more an alternative than a complement to the reporting procedure.

THE LAW

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by the Netherlands on 3 May 2006 and entered into force for this State on 1 July 2006, the complaint has been submitted in writing and concerns Articles 1, 4, in particular 4§3, and 20 of the Charter, provisions accepted by the Netherlands when it ratified the Charter on 3 May 2006, as well as Article E. The Netherlands is bound by these provisions since the entry into force of this treaty in its respect on 1 July 2006. The Committee further observes that UWE also refers in its complaint to the 1961 Charter and to Article 1 of the 1988 Additional Protocol, and it recalls that only the Charter is applicable.

6. The Government raises several objections concerning the grounds of the complaint, notably that the complaint is too vague and imprecise and that it seems more an alternative than a complement to the reporting procedure (see §§2 and 4 above).

7. As regards the first ground, concerning the wage gap for equal, similar or comparable work, the Committee notes that UWE alleges specifically the violation by the Netherlands, of Article 4§3 and Article 20 of the Charter. Article 4§3 guarantees the right of men and women workers to equal pay for work of equal value. Article 20 of the Charter also concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in the Netherlands unequal pay is a reality, despite the international obligations entered into and the legislation enacted by the Netherlands in this area. Concerning the practice of national bodies, UWE also alleges that the Netherlands Institute for Human Rights, in which is integrated the Equal Treatment Commission, and the labour inspectorate are not able to fight efficiently against wage discrimination between men and women. These bodies have not removed existing obstacles to lodging complaints relating to discrimination on grounds of unequal pay for equal, similar or comparable work between men and woman.

8. As regards the second ground, concerning the representation of women in decision-making posts in private companies, UWE invokes national provisions in this field and, in support of the allegation that these provisions are not applied in practice, also refers to statistical data reported by European and national sources concerning the performance of the Netherlands in this area. The Committee recalls that the right to equal opportunities is guaranteed by Article 20 of the Charter.

9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the Charter accepted by the Netherlands. The Committee further observes that UWE has indicated in what respect it considers that the Netherlands has not ensured the satisfactory application of these provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, *European Federation of Employees in Public Services (EUROFEDOP) v. Italy*, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.

10. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, UWE is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of international non-governmental organisations entitled to lodge complaints before the Committee.

11. As regards the particular competence of UWE in the area of the complaint, the Committee notes that, according to Article 2 of its Statute, the social objective of UWE is:

“(a) to promote action consistent with the purpose of IFUW [International Federation of University Women] by encouraging cooperation between its European members at various

levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the programme of IFUW,

(b) to participate in the progressive development of European Civil Society, by working to achieve the programmes of the Council of Europe and the European Women's Lobby and other European governmental and non-governmental organisations as is deemed appropriate by the aims and programmes of UWE,

(c) to promote lifelong education, especially for women and girls.”

12. The Committee considers that these activities fall within the context of actions in favour of gender equality, one of the fundamental criteria of democracy (Recommendation No. R(98)14 of the Committee of Ministers to member States on gender mainstreaming, adopted on 7 October 1988 at the 643rd meeting of the Ministers' Deputies). Wage equality for equal work is one of its pillars as well as a major societal challenge. Taking into account the broad scope of UWE's activities, which are developed in the framework of equality of rights and non-discrimination, the Committee considers that the condition concerning the competence of the complainant organisation is fulfilled for the purpose of the instant complaint.

13. Finally, the complaint filed on behalf of UWE is signed by Ms Anne Nègre, a lawyer who, according to the mandate signed by Ms Edith Lommerse, President of UWE, and by Ms Roxana Elena Petrescu, General Secretary of UWE, is authorised to lodge a complaint against the 15 States Parties on behalf of UWE. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

14. For these reasons, on the basis of the report presented by Eliane CHEMLA, and without prejudice to its decision on the merits of the complaint, the Committee

DECLARES THE COMPLAINT ADMISSIBLE IN RESPECT OF ARTICLES 1, 4, 20 AND E OF THE CHARTER

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 13 October 2017.

Invites the complainant organisation to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 13 October 2017, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 13 October 2017.



Eliane CHEMLA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary