



European
Social
Charter

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

DECISION ON THE MERITS

Adoption: 6 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) 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 310th session in the following composition:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
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Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 19 March, 12 September, 16 and 17 October, 2,3 and 6 December 2019,

On the basis of the report presented by Eliane CHEMLA,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint lodged by University Women of Europe (UWE) was registered on 24 August 2016.
2. UWE alleges that the situation in the Netherlands is in violation of Articles 1, 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 the Netherlands.
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. On 5 October 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. The Government's submissions on the merits were registered on 3 November 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 9 February 2018. UWE's response was registered on 9 February 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 5 April 2018. On 7 March 2018, the Government asked for an extension to the deadline for presenting its further response. The President of the Committee extended this deadline until 20 April 2018. The Government's further response was registered on 19 March 2018.

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

12. Pursuant to Rule 32A of the Rules, the President invited the European Union to submit observations by 15 April 2018. On 20 April 2018, the European Union asked for a new deadline for presenting its observations on the complaint. The President of the Committee set 25 May 2018 as a new deadline. The European Union's observations were registered on 28 May 2018.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. UWE alleges that the situation in the Netherlands constitutes a violation of Articles 1, 4§3, 20 as well as E of the Charter on the following grounds:

- Firstly, UWE alleges that a pay gap between women and men still persists. UWE maintains that the Netherlands has not achieved equal pay for equal work and has not ensured the respect for the principle in practice.
- Secondly, UWE alleges that women are still under-represented in decision-making positions within 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 dismiss UWE's allegations as unfounded on the basis that it uses every possible means at its disposal to achieve equal treatment of men and women, and that extensive legislation is in place aimed at realising equal treatment on the labour market and prohibiting gender discrimination as well as an effective enforcement system. Accordingly, the Committee should hold that the Netherlands has not violated Articles 1, 4§3 or 20 alone or in conjunction with Article E of the Charter.

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 the Netherlands, 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 the Netherlands 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 submitted observations through the Netherlands Institute for Human Rights.

35. According to the Institute's submissions, statistics show that the gender pay gap is a persistent problem in the Netherlands. Data from biennial research shows that, in 2014, the gender pay gap in the private sector was 20% and 10% in the public sector. However, the differences between the average hourly salary of all men and women are slowly declining. Between 2011 and 2016, the average gender pay gap in the Netherlands dropped from 18.6% to 15.6%. The gender pay gap does not provide an answer to the question of whether women are paid less than men for work of equal value. After taking into account factors that objectively can explain differences in pay such as work experience or the specific sector of employment a difference in wage between men and women in the Netherlands remains at 7% in the private sector and 5% in the public sector. This unexplained difference may point in the direction of wage discrimination.

36. In accordance with its legal mandate, the Institute investigates individual cases to determine whether discrimination is or has been taking place. In individual wage discrimination claims it can be established whether differences in pay amount to wage discrimination in violation of Dutch equality laws. Since 2005, the highest number of pay discrimination complaints received per year was 15. In 2016 and 2017, these numbers were even lower. Several reasons can be identified to explain why wage discrimination goes underreported. One of the reasons is the lack of knowledge and awareness (inter alia on the part of employers) regarding, not only the legal framework, but especially the mechanisms that may cause wage discrimination. Moreover, individual employees most often do not have full access to relevant data concerning wages in their organisation. This makes it very hard to know whether their remuneration is lower compared to colleagues in a comparable job with equivalent work experience. Also filing an official complaint is risky (most employers do not welcome discrimination cases) and may involve a significant investment. According to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report: the Netherlands 2017 “A number of barriers are reportedly responsible for that, including costly proceedings, a lack of pay transparency, a lack of sensitivity for/knowledge of sex-based pay discrimination, the fear of victimisation and a lack of trust in the national judicial system”. Therefore, it is not surprising that the Netherlands Institute for Human Rights receives far less payment discrimination complaints than expected based on the statistics.

37. For this reason, the Institute has carried out research into the mechanisms causing wage discrimination on a more systematic basis. The Dutch Equal Treatment Commission, the predecessor of the Institute, conducted three intensive micro-level studies into the underlying root causes and mechanisms of wage discrimination in three sectors: 18 general hospitals in 2011; the education sector in 2015 (6 colleges); and, in 2017, the insurance sector (4 insurance companies). In all three sectors, the Institute found differences in pay in favour of men that cannot be explained by objective criteria, such as work experience. In contrast to individual wage discrimination cases and research into the general pay gap, the three studies show that women are systematically paid less for the same performance.

38. Jobs are considered equivalent when they fall into the same job category and are of equal value. In every organisation, five job categories were chosen in which wages were investigated in more detail at the level of individual employers. Based on personnel files, individual wages were broken down to study the criteria applied that determine an employee's pay. An employer determines an employee's salary on the basis of various criteria such as job grade and professional experience. These criteria are referred to as remuneration criteria in those investigations. Criteria may be either neutral or non-neutral. The non-neutral remuneration criteria are the criteria which could lead to wage discrimination. By studying individual files, the average wage based

on non-neutral remuneration criteria for men and women within a certain job category could be calculated unveiling differences in pay for which there is no objective justification. Some of the remuneration criteria are quite common in practice, but nevertheless carry the risk of leading to wage discrimination. For example, wage negotiation turns out to be an important explanation of potential wage discrimination. Another common practice is that, for new employees, alignment with the previous salary is sought. Not only is the previous salary not necessarily related to the value of the job, but also the use of this criterion as a determining factor for wage may allow past wage discrimination to continue to have an effect. These are just a few examples of the practices that were unveiled that explain how wage discrimination comes about.

39. The Institute found that wage discrimination against women indeed exists in the three investigated sectors and there are no reasons indicating that the situation is different in other sectors. In the higher paying jobs, differences in salary between male and female workers based on non-neutral criteria seem to be higher than in lower paying jobs. For example, in the hospital sector, women in the highest paying profession, of the five investigated professions, earned on average 187 euros less per month based on non-neutral criteria than men. In the lowest paying job investigated, women earned on average 56 euros less per month based on non-neutral criteria. In the college sector, the difference ranged from 71 euros to 269 euros on average to the disadvantage of women, per month. In the latest research, the average difference within a profession was at most 211 euros per month.

40. Based on the findings of these three sector studies, the Institute has engaged in awareness-raising activities in the three sectors and beyond. Results of the investigations were presented to representatives of organisations such as the Management board, the Human Resources department and the line manager. The insights into the causes of wage discrimination offer employers a perspective on how to tackle the root causes of wage discrimination within organisations.

41. However, addressing wage discrimination in earnest will require more measures than awareness raising and the possibilities for individuals to lodge an individual complaint for violation of the equality legislation. Policy measures and possible legislative amendments are required. Efforts are often directed at empowering women, for example, by stressing the need to improve their negotiation skills. However, research shows that women not only tend to negotiate less, but also, when they do negotiate their requests are less successful as this approach is less accepted. Wage discrimination is a structural and persistent problem and the possibilities to address wage discrimination for the individual are limited. As discussed earlier, individuals do not have full information about the wages within their organization. Giving employees more insight into the salaries in an organisation, may support the individual wanting to file a legal complaint.

42. In March 2018, four Dutch political parties presented a bill that was inspired by the example of Iceland. According to the proposed bill organisations with more than fifty employees, will be obliged to show that they pay men and women equally for equal work. These organisations will have to provide figures every three years on the salary of the employees. If unequal pay is established, organisations will be given time to improve this. When improvement fails to follow, fines would be imposed. Earlier a bill was presented in which work councils are given greater responsibility within organisations to prevent unequal pay.

RELEVANT DOMESTIC LAW

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

A – The Constitution

44. Article 1 of the Constitution reads as follows:

“All persons must be treated equally and discrimination on any grounds is prohibited. “

B – The General Equal Treatment Act (GETA) of 2 March 1994

45. Equal treatment between men and women is prescribed by the General Equal Treatment Act, as well as in the Act on Equal Treatment of Men and Women (ETA) and Article 7:646 of the Dutch Civil Code.

46. Several articles prohibit discrimination: Article 5 of GETA forbids discrimination in the field of employment. Article 6 prohibits discrimination in the field of the liberal professions, Article 6a in the area of associations of employers, employees and in professional organisations, Article 7 in the field of goods and services and Article 7a in the area of social protection, including social security and social advantages.

C – The Equal Treatment Act (ETA) of 1 March 1980

47. ETA prohibits sex discrimination in the field of employment and pensions, both in the private and in the public sectors.

48. Article 5 covers all areas of discrimination, not just sex discrimination, prohibits differentiation with regard to terms and conditions of employment in the public and private sectors. All discrimination, direct and indirect, is prohibited.

D – The Civil Code

49. Article 646, book 7 of the Dutch Civil Code specifically relates to the private sector and applies to relations between employers and employees in general. The Civil Code stipulates that an “employer may not differentiate between women and men when drawing up an employment contract, [...], determining employment conditions [...]”.

E – Management and Supervision Act (WBT), in force since 1 January 2013

50. The act indicates that large companies will be required to have a balanced composition on their boards. The act indicates that a management board, supervisory board or, in a one-tier board, board of directors, will be deemed to have a balanced gender distribution if, of the seats occupied by individuals, at least 30% are occupied by women and at least 30% by men.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

51. 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.

52. 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)

53. 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.

54. 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.

55. 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.

56. 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)

57. 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.”

58. 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

59. 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.”

60. 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.

61. 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

62. In its General Recommendation No. 1312 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

63. 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

64. 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)

65. 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:

66. 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

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

68. 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.”

69. 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. [...]”

70. 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

71. 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.”

72. 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).

73. 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.

74. 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

75. 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.

76. 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.”

77. 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

78. 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

79. 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.

80. 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).

81. 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).

82. 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).

83. 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).

84. 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).

85. 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).

86. 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).

87. 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).

88. 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).

89. 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).

90. 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

91. 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.

92. 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)*).

93. 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.

94. All the States Parties to the Charter having accepted Articles 4§3 and/or 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).

95. 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.

96. 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.

97. 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).

98. 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).

99. 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.

100. 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.

101. In the light of the above considerations and taking into account the allegations presented and the information submitted by the parties as well as the information received from other sources, the Committee will consider the issues at stake in the following order:

(a) First, the Committee will assess UWE’s allegations concerning the respect for the right of equal pay for equal work or work of equal value from two angles:

- The obligations of the State as regards the recognition and the enforcement of the right to equal pay under Articles 4§3 and 20.c of the Charter. These obligations include the following:
 - recognition in legislation of the right to equal pay for equal work or work of equal value;
 - ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;
 - ensuring pay transparency and enabling job comparisons;
 - maintaining effective equality bodies and other relevant institutions;

- The obligations of the State to adopt measures to promote the right to equal pay for equal work or work of equal value, under Article 20.c of the Charter. These obligations include the following:
 - collection of reliable and standardised data with a view to measuring the gender pay gap;
 - adoption of measures to promote equal opportunities through gender mainstreaming.

(b) Secondly, the Committee will assess the issues arising in relation to the representation of women in decision-making positions within private companies under Article 20.d of the Charter, according to which States Parties have undertaken to ensure and promote the right to equal opportunities and equal treatment in the field of career development, including promotion.

I. ALLEGED VIOLATION OF ARTICLE 4§3 AND 20.C OF THE CHARTER AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

102. 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

103. 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

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

105. According to UWE, the protection against discrimination does not work properly given the actual practical results in terms of equal pay for women and men for equal, similar or comparable work. While the Netherlands Institute for Human Rights is an independent body that supervises compliance with human rights and drafts reports and conclusions, it can also receive complaints and act as a quasi-judicial body within the bounds of its powers.

106. UWE states that the information on remedies and sanctions is insufficient. There is no indication of the number of applications concerning the relevant inequality and discrimination, the number of rulings in favour of victims and the length of the proceedings, the grounds for such rulings or what compensation is paid. In spite of the mechanism for reversing the burden of proof in limited circumstances, mentioned by the Government, there is no indication of the result of such reversal. The number of admissible complaints is low and is far below the actual number of cases of inequality. UWE further states that the limitation period under Dutch law for recovering damages in pay disputes is too short. It is also unclear whether complainants received compensation in terms of back-pay, without being time-barred, or also in terms of career advancement.

107. UWE further states that according to the Government the results differ depending on whether a victim of unequal pay chooses a friendly settlement through the NIHR or seeks redress through the competent courts, which is not free of charge. UWE states that the Netherlands Institute for Human Rights applies the reversal of the burden of proof in discrimination cases differently from courts of law.

108. UWE further states that another factor that may have a negative impact on women workers is the trade unions' lack of interest in equal pay for women and men. The respondent state indicates that relationships in firms and between the social partners are based on freedom of contract. It is well established that the latter is not conducive to gender equality, especially since UWE considers that agreements with discriminatory effects are not banned, and that the state could and should take action, but it fails to do so. The respondent state does not give any specific details of steps taken, assessments or results in companies given the interaction with the social partners.

109. Sanctions need to be "effective", "dissuasive" and "proportionate", however UWE considers that these criteria are not met by Dutch legislation.

Pay transparency and job comparisons

110. UWE states that the legislation allows for comparisons of jobs to be made outside the company directly concerned. However, referring again to the CEDAW assessment on the Netherlands, UWE highlights the importance of using an objective job evaluation system, free from gender bias. UWE also emphasises the need to promote any measures to allow for appropriate comparison beyond enterprise level in cases where the possibilities for comparison at the enterprise or establishment are insufficient, for example, because women are more heavily concentrated in certain sectors or occupations.

111. According to UWE, it would appear that occupational categories with clearly defined classification criteria are not sufficiently defined, 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.

112. UWE believes that structural effects and the impact of stereotypes that are hard to change cannot serve as excuses for lack of progress towards meeting the requirements of the Charter. The argument that female workers are concentrated in education and health is not valid for justifying the pay gaps. 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

113. UWE refers to the role of the Netherlands Institute for Human Rights, which deals with gender mainstreaming, and has taken over the tasks of the former Commission for equal treatment. In 2010, it published a study on reprisals against persons lodging complaints, as the fact that retaliation is prohibited does not mean that

bringing cases is risk-free. UWE states that the Institute has an insufficient budget.

114. Workers who believe they have suffered gender-based discrimination may apply to the Institute for Human Rights or to the civil courts. In both cases, Section 8a of the Equal Treatment Act applies, under which it is prohibited to sanction individuals who have alleged breaches of the law in judicial or non-judicial proceedings. The measures to protect employees included in the general provisions of civil law also provide for courts to impose penalties on employers and pay compensation to workers.

115. As regards the Labour Inspectorate, UWE claims, referring to the report of CEDAW on the Netherlands, that it is the employer and workers within a company who have primary responsibility for occupational health and safety policy in the Netherlands, while it should be a task of the Government. The Government (the Ministry of Social Affairs and Employment) is allowing companies to “customise” the way they seek to promote good working conditions. The Inspectorate is responsible for enforcing the legislation, but UWE claims that in fact the Labour Inspectorate does not have the resources to ensure compliance with anti-discrimination legislation on the labour market.

116. UWE further refers to the response of the Government, which states that the Labour Inspectorate does not have among its tasks the monitoring of pay-related issues involving individual workers. Therefore, workers are not able to report their circumstances to the authorities and the Labour Inspectorate has no powers in this respect.

2. The respondent Government

Recognition of the right to equal pay in legislation

117. 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 correctly.

118. The Government also points out that remuneration is determined between the employer and the employee on the basis of freedom of (employment) contract. Therefore, aside from establishing a statutory minimum wage and legal frameworks for equal pay (for work of equal value), the Government refrains from interference with remuneration. This means equal pay in individual cases is not enforced by government institutions. The Government believes it is less effective to have government institutions tracking down, investigating and proving individual cases of unequal pay for work of equal value, and more effective to ensure access to appropriate and effective remedies that allow parties to address discrimination themselves.

119. The Government emphasises that pay discrimination is prohibited under Dutch law. The General Equal Treatment Act (Article 7 et seq.), Book 7 of the Civil Code (Article 646 et seq.) and the Equal Treatment Act (Article 5 et seq.) stipulate that equal pay must be given for work of equal value, unless the distinction is objectively justified.

Effective remedies

120. Between 2007 and 2016, the Institute received 266 complaints regarding a remuneration component. The Institute presented findings in 124 of the 266 cases (the other complaints were withdrawn, some after the parties arrived at a settlement, or were declared manifestly unfounded). In 41 cases (approximately 33%) the complaints concerned an alleged distinction on the grounds of gender. In 25 of those 41 cases (61%) an unlawful distinction on the grounds of gender was found. The Government maintains that the Institute plays an important role in addressing pay inequality.

121. The Government further submits that, regardless of whether a case has been assessed by the Institute, disputes can also be brought before a civil court or civil service tribunal. This option is not free of charge. The burden of proof can be shifted. The civil court can order an employer found to have engaged in discrimination to pay compensation at the claimant's request. In addition, the civil court can impose a penalty if the demand is made and the court deems it reasonable and fair in the case in question. Finally, the court can order one party to pay the other party's legal costs. Civil servants can bring comparable legal proceedings before a public service tribunal. It has been shown that Dutch courts attach great value to the Institute's findings and usually take them into account in their judgments.

122. Another free-of-charge option is mediation by a municipal antidiscrimination bureau (ADB), which offers members of the public independent and efficient legal aid. Complaints can be submitted to an ADB online or by phone. After a complaint is filed, the bureau contacts the complainant, who then explains the details of the case. With the complainant's consent, the ADB contacts the individual or organisation accused of discrimination. The ADB attempts to resolve the complaint through mediation and can, if necessary, refer the complainant to other bodies and provide guidance during any follow-up steps.

123. The Government rejects the allegation made by UWE, which confuses the roles of the Institute and the National Ombudsman. Furthermore, UWE's argument that female employees who demand equal pay run a considerable risk of being dismissed and that proceedings are costly and physically and emotionally draining are barely substantiated and is, at least in part, inaccurate. UWE observes that the limitation period under Dutch law for recovering damages in pay disputes is too short, but it does not refer to any legislative provision. The limitation period for claiming equal pay is five years, in line with the generally applicable national limitation period for pay claims laid down in the Civil Code. This period does not unreasonably limit the possibility of recovering damages.

124. The Government finally states that procedures have been designed to be as straightforward as possible and some are free of charge. It should be pointed out that the burden of proof rests with the employer after the employee has raised a prima facie suspicion of discrimination, contrary to UWE's allegation that the Netherlands Institute for Human Rights applies the shift in the burden of proof in discrimination cases differently from the courts of law. In both instances, a prima facie case of discrimination suffices for the burden of proof to be shifted.

Pay transparency and job comparisons

125. The Government states that wage scales (general remuneration arrangements for defined jobs) are laid down in collective agreements. The social partners monitor the application of these scales. The Government can support the social partners in this task. At the request of the social partners, the Minister of Social Affairs and Employment can make specific provisions of collective agreements generally binding. This means that these provisions then apply to all businesses in the sector of industry concerned regardless of whether individual employers and employees are members of the employers' and employees' organisations that concluded the collective agreement.

126. Works councils in the private sector also have a statutory tool for promoting equal pay at their company. Under Article 27.1 (c) of the Works Councils Act an employer requires the approval of the works council to adopt, amend or revoke a remuneration or job rating system. Such a system classifies wages and jobs. A works council can ask the Institute to assess a proposed remuneration system to establish whether it contains any discriminatory elements. If the Institute finds any such elements, for instance, if wages for jobs performed mostly by women are lower for no apparent reason, the works council can withhold its approval. Under section 28 of the Works Councils Act the works council is also tasked with guarding against discrimination within the company and specifically promoting equal treatment of men and women. This may include addressing pay disparities between men and women.

127. The Government further states that there are sufficient means to enforce equal treatment in terms of pay as ensured by the legislation. A choice has been made for a system of enforcement which does not include binding interventions in employment relationships, and thus respects the freedom of contract. Monitoring instruments are given to workers' representing bodies to use their influence to the same effect in a more general way.

128. Information for employers and employees about labour-related topics is available on various websites, including www.loonwijzer.nl, www.stvda.nl. These websites contain a lot of practical information and guidelines and allow employees to

compare their salaries to those of employees in a similar situation in terms of occupation, education and work experience. On these websites employees will also find a calculator for checking gross and net pay, a checklist for equal pay and employment conditions, and an equal pay quick scan, which allows employees and employers to check whether their organisation makes pay distinctions based on gender, working hours or origin. The websites also offer a step-by-step plan for works councils. The Institute's website also offers a quick scan to check for unequal pay.

Equality bodies and other institutions

129. The Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) is an independent human rights institution that was granted "A status" in 2014. It protects, monitors, explains and promotes human rights (including equal treatment) in the Netherlands through research, advice and information. The Institute draws up annual reports about the human rights situation in the Netherlands and publishes its research findings.

130. In addition to these general monitoring tasks, the Institute assesses individual complaints. The procedure is easily accessible and free of charge. Complaints can be submitted to the Institute using the complaint form on its website. The Institute will examine the complaint and hold a hearing at which both parties can express their views. The complainants need only demonstrate a prima facie suspicion of discrimination. In principle, the Institute presents its findings within eight weeks of the hearing. In its findings the Institute may include a recommendation to the responsible party on how discrimination can be avoided in future. Under Section 11 of the Act establishing the Institute, it notifies the complainant or, if the complainant is a representative, the victim of discrimination, and the party accused of discrimination of its findings in writing, stating its reasons. The Institute publishes its findings on its website. The Institute's findings are not legally binding, but Dutch courts often take them into account in their own assessments.

131. At the beginning of 2016, the Institute published the findings of a study into the gender pay gap among staff at institutions of higher professional education and the origins of that pay gap. This study uncovered over 30 remuneration criteria that can result in gender discrimination. Examples of these criteria include remuneration based on last earned salary or on salary negotiations with a candidate and inadequate pay increases following promotion. In these cases pay is not based on the value of the work. The application of these criteria was shown to benefit men more often than women. The parties to collective agreements in the sector set to work using the findings of the survey and sharing knowledge and ideas on how to prevent pay disparities within institutions of higher professional education in the future. In 2009 the Equal Treatment

Commission, the predecessor of the Institute, carried out a similar study into the salaries of hospital staff.

132. The Government considers that by bringing to light social factors that contribute to wage inequality, these studies will raise awareness, which in turn will contribute to the reduction and eventually the elimination of pay disparities. The Institute publishes recommendations for employers along with its findings.

133. The Inspectorate on Social Affairs and Employment, part of the Dutch Ministry of Social Affairs and Employment, carries out inspections of compliance with statutory measures meant to ensure the labour market functions properly and worker safety is protected. It monitors compliance with the rules to combat illegal work, circumvention of the minimum wage, labour exploitation, rogue job placement services and other forms of labour market fraud. It also monitors adherence with measures that promote safe and healthy working conditions, such as working hours and breaks for staff, and measures that limit risks to staff, consumers and the surrounding area. The Inspectorate identifies developments and risks in the social affairs and employment domain and reports on these matters to parties concerned. Its tasks do not include monitoring pay-related issues involving individual employees due to the extensive assessment these cases would require.

134. The social partners also have the statutory power to submit to the Minister a request, stating reasons, to investigate compliance with one or more specific provisions in order to collect data that can be used in civil proceedings against an employer. Investigations of this nature are carried out by the Inspectorate on Social Affairs and Employment. The Inspectorate reports to the Minister as to whether or not the provision or provisions of the collective agreement have been complied with. The findings can be used as evidence in civil proceedings.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

135. 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.

136. 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.

137. 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.

138. 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).

139. The Committee notes that in the Netherlands, both the principle of equal opportunities and anti-discrimination, are included under the ETA, enforced by an Equal Treatment Commission (merged in 2012 into the Netherlands Institute for Human Rights). Moreover, both the ETA and the GETA contain provisions banning discrimination on grounds of gender. Under the provisions of the Civil Code, any violation of equal treatment legislation may also constitute an unlawful act. Gender is treated as a relevant category of discrimination, which is prohibited in every field. The Committee also recalls that the legislative framework specifically prohibits discrimination in the area of private and public employment, including in respect of pay and dismissals.

140. Therefore, the Committee considers that the obligation to recognise the right to equal pay for work of equal value is satisfied.

Effective remedies

141. 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.

142. 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.

143. 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).

144. 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.

145. The Committee observes that, according to UWE, there is limited domestic case law on equal pay in the Netherlands and women who try to bring cases to court encounter significant obstacles, such as fear of reprisals, excessive costs and long procedures.

146. The Committee notes that the Netherlands Institute for Human Rights in its observations indicates that the number of gender pay discrimination cases in the Netherlands is low, and that this number decreased further in 2016 and 2017. A lack of awareness among discrimination victims and a lack of full access to relevant data concerning pay in their workplace are among the reasons for this decrease.

147. The Committee also notes that, according to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on Gender Equality: the Netherlands 2018, access to the courts is ensured in general for victims of discrimination as well as for interest groups. However, if access to the Institute is free of charge, the judicial system is not. There is nevertheless a system of legal aid for persons with low income, although this has been restricted in recent years as part of austerity measures.

148. The Committee notes that the legislation in the Netherlands requires a shifting of the burden of proof to the employer in cases of pay discrimination.

149. The Committee also notes that according to the above-mentioned Country Report, retaliatory dismissals are forbidden and that sanctions in the event of discrimination are imposed by the civil or administrative courts. Before the amendments introduced in the legislation on 1 July 2015, which explicitly established that in case of discrimination a worker may claim reasonable compensation on the basis of employment law, damages were hardly ever claimed (and not awarded) in such cases. According to the Report, the compensation awarded is quite low. This practice may change with the legislative amendment introduced, although as of yet the case law is scarce on this point.

150. The Committee notes that, despite the remaining obstacles to render remedies fully effective in the field of gender pay discrimination, access to courts is generally ensured, there is a shift in the burden of proof and retaliatory dismissals of workers who make pay discrimination claims are forbidden. Therefore, the obligation to ensure access to effective remedies in the meaning of the Charter is satisfied.

Pay transparency and job comparisons

151. 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.

152. 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.

153. 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).

154. 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.

155. Moreover, national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important means of ensuring that the equal pay principle is effective under certain circumstances,

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

156. The Committee notes that under Article 8 of the Equal Treatment Act, employers have an obligation to make the pay system transparent. The European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on Gender Equality: the Netherlands 2018 indicates that employers are the ones responsible for making clear in what way and on the basis of which standards they ensure pay transparency. Certain pay transparency initiatives have been taken, such as the creation of websites subsidised by the Government to publish levels of pay. Moreover, employers have the responsibility to report pay data internally to works councils, but these data remain confidential and accessible only to the internal body. The Netherlands Institute of Human Rights has pointed out in its observations that the final pay is often determined through individual negotiations and that research shows that women not only tend to negotiate less but also, when they do negotiate, their requests are less successful.

157. The Committee further notes from the above-mentioned Country Report that the Netherlands has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

158. The Committee observes that the legal framework by placing the main responsibility in ensuring pay transparency on employers relies on the need for a good system of job classification with well-defined criteria. However, the Institute has stated in its observations that there are important differences in pay between women and men across sectors. This is partly due to the use of non-neutral criteria for determining pay, such as attaching insufficient weight to previous work experience determining it on the basis of the last-earned salary elsewhere and eventually using negotiations to fix the final wage.

159. The Committee further observes that domestic law does not lay down parameters for establishing equal value of the work performed, such as the nature of the work, training and working conditions. It also acknowledges that the Dutch legal framework requires an actual comparator (and not a hypothetical one) for the purposes of job comparisons in order to establish an equal pay claim in the courts, and that this comparator should be of the opposite sex. The European Network of Legal Experts in gender equality and non-discrimination, Report on “The enforcement of the principle of equal pay for equal work or work of equal value” 2017 points out that differences in pay are often justified in a broad manner, which may reduce the equality concept to an empty concept. The Report indicates that in the specific case of the Netherlands the legislation allows that pay differences are justified on the basis of objective reasons that evidently must have no connection whatsoever with discrimination. The Report further states, however, that “a typical example of a justification that should not be acceptable as it has too strong a connection with discriminatory practices is the reference to freedom of negotiations or freedom of contract and the fact that a female worker would have consented to work for a lower wage”. (...)

160. The Committee takes note of the bill introduced in March 2019 in Parliament, which proposes that enterprises with more than 50 workers would be obliged to show that they pay men and women equally for equal work. The bill provides that these enterprises would have to provide figures every three years on the salary of the workers. If a situation of unequal pay is found, a certain deadline will be fixed and if this deadline is not respected fines can be imposed. The Committee considers that giving workers more insight into their pay may reduce gender pay discrimination and support the individual wishing to file a legal complaint. The Committee notes that the proposed bill is not yet in force.

161. Finally, the Committee recalls that in the conclusion adopted in the framework of the reporting procedure on Article 20 in respect of the Netherlands, it noted that the situation was in conformity with the Charter because it was possible to make job comparisons outside the company directly concerned. In equal pay cases, a comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, the Netherlands, Article 20).

162. In view of the above, the Committee considers that the obligation to ensure pay transparency in practice has not been satisfied, in particular because individual workers most often do not have full access to relevant data concerning pay in their workplace and that domestic law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions.

Equality bodies and other institutions

163. 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.

164. 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.

165. 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.

166. 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.

167. The Committee notes that the Netherlands Institute for Human Rights has a broad mandate, which combines functions of monitoring and promotion with assistance to victims (support and litigation), as well as decision-making. Indeed, the Institute is an independent body which follows complaints about unequal treatment, drafts reports, gives advice and investigates possible instances of structural discrimination on its own accord, including individual cases. The material scope of its mandate includes all areas covered by the GETA. In 2012, the Institute assumed all the tasks of the previous Equal Treatment Commission (ETC).

168. According to the European Network of Legal Experts in gender equality and non-discrimination, Report on “Equality bodies making a difference” 2018, the Institute has had political support for enhancing its potential and impact and it is considered to be able to play a substantive role in fighting discrimination. The Institute is even identified in this report as an example of good practice in terms of independence.

169. According to UWE, the Institute does have the mandate to fight gender pay discrimination, but it has insufficient funding. The Committee further notes from the European Network of legal experts in gender equality and non-discrimination, Country Report on non-discrimination: the Netherlands 2018 that, after an initial increase of budget and staff for the Institute compared to the resources allocated to the former ETC, in 2015 the budget for the NIHR was back to the level that was allocated to the former ETC, due to the overall budget cuts during the economic crisis. However, the

Committee also notes that the allocation of resources has increased slightly in recent years and that the Institute has full power to recruit and manage its own supporting staff.

170. In the light of the above, the Committee notes that the Institute has a broad mandate and has the means to implement its mandate. It therefore considers that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

Concluding assessment

171. Firstly, the Committee observes that the the principle of equal pay for equal work or work of equal value is enshrined in domestic legislation and therefore satisfies the requirements of the Charter.

172. Secondly, the Committee observes that despite the remaining obstacles in terms of rendering remedies fully effective in the field of gender pay discrimination, access to effective remedies is ensured in practice.

173. Thirdly, the Committee notes that individual workers most often do not have full access to relevant data concerning wages in their organisation and that national law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions. The Committee therefore considers that the principle of pay transparency is not adequately ensured in practice.

174. Finally, the Committee notes that the Netherlands Institute for Human Rights functions within the framework of their mandate and the resources allocated. It considers that, the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

175. The Committee holds that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is not ensured in practice.

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

176. 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

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

178. In this context, UWE states that the Netherlands is ranked 32 in the global gender gap index prepared by the World Economic Forum in 2017, and therefore, cannot be considered as having achieved equality in practice. Moreover, irrespective of the indicators showing the final outcomes in terms of gender equality of all the strategies implemented, the results achieved by the various mechanisms must give rise to reliable statistics concerning the action taken: number of checks performed, cases processed by the courts, offences found, penalties imposed and compensation measures ordered by administrative or judicial bodies such as employment tribunals and civil and criminal courts. In the present case, the information provided by the respondent state still 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.

179. UWE further alleges that, whether it is with regard to the gender pay gap or the balanced participation of women and men in decision-making positions in private companies or indeed public bodies, a country cannot use the pretext of where it currently stands compared to the European average for not having to make efforts to improve its position in relation to average performance. According to the Commission, based on Eurostat 2014 figures, in the Netherlands, the gender pay gap stands at 16.1% (the average gender pay gap in the EU is 16.7%). According to Eurostat figures for 2015, this remained at 16.1% and the gender overall earnings gap in the Netherlands stands at 48.3% (the average gender overall earnings gap in the EU is 39.8%).

180. To assess the reality of the pay gap, which is, according to UWE, less favourable than the Government maintains, it must therefore be corrected or refined with other indicators and data. The indicator relied on by the Government 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; in almost half the cases, this is not a choice but is forced on them. In addition, few women hold positions of responsibility.

181. UWE points to shortcomings as concerns measures taken to promote equality and reduce the pay gap. As the actual legislation is no longer the main obstacle, focusing on the policy is much more important, but that does not seem to be a priority. The employment equality policy is not fully effective. It is disparate in nature and refers to negotiation at company level. The various bodies are not provided with basic training in gender mainstreaming to enable them to implement internal plans or measures. It is also inconsistent as there is no general framework. The Government must therefore introduce one, as an overall change is needed to eradicate inequality and discrimination. Finally, the protection against discrimination does not work properly, given the actual practical results in terms of equal pay for women and men for equal, similar or comparable work.

182. UWE further maintains that the information provided by the Government 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, according to UWE, it is 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.

183. Finally, according to UWE, the measures implemented do not apply to small enterprises.

2. The respondent Government

184. The Government underlines that the overall gender pay gap must be distinguished from pay discrimination. The overall pay gap is largely the result of the difference in positions of men and women on the labour market. Differences may result from differences in job grade, work experience, education, full-time and part-time work, irregular hours and other factors. Labour market segregation between male and female professions and specialisms is another cause.

185. Biannually, Statistics Netherlands carries out an investigation commissioned by the Ministry of Social Affairs and Employment into gender-based pay disparities to determine the overall gender pay gap. The most recent investigation shows that in the Netherlands the overall pay gap is shrinking. In the public sector the difference in pay between men and women decreased from 16% in 2008 to 10% in 2014. In the private sector the figure decreased from 22% to 20% over the same period. These findings show that the overall gender pay gap is decreasing.

186. The Government contests UWE's suggestion that the gender pay gap is not accurately measured and insists that the data provided biannually by Statistics Netherlands is highly reliable. The gender pay gap is a serious area of concern, which the Government addresses through various means, and reliable data is a precondition for effective policy. For this reason, the Government has asked the NIHR to conduct studies into the underlying root causes and mechanisms of wage discrimination in different sectors. These studies, funded by the Government, have taken place in colleges, as mentioned by UWE, and in the insurance sector. The NIHR mentions these studies, as well as a previous study in general hospitals, in its written contribution on unequal pay in the Netherlands.

187. According to the Government, in addition to putting in place a system of effective legislation, sufficient supervision and monitoring and accessible remedies for enforcement, various efforts are made in the Netherlands to eradicate pay inequality between men and women. These efforts relate to addressing social causes and providing information.

188. A long-term publicity campaign called '*Zet een streep door discriminatie*' ('Strike out discrimination') was launched in 2015. This campaign was set up as part of the national action plan against discrimination and is intended to raise awareness that any form of discrimination is unacceptable. The call to 'strike out discrimination' encourages individuals, businesses and government agencies to help prevent and combat discrimination. The campaign ran until the end of 2018. One part of the campaign focuses specifically on labour market discrimination during the recruitment and selection process. The aim is to raise awareness among employers and boost overall willingness to report discrimination.

189. The Netherlands Institute for Social Research (SCP), a government agency which conducts research into both solicited and unsolicited social scientific research, also plays an important role. Every two years the SCP publishes the Equal Rights Monitor, which covers key developments with regard to gender equality. In the most recent edition from late 2016, the SCP notes that progress in equal opportunities for women is slow but that positive trends have been identified (https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2016/Emancipatiemonitor_2016). For instance, the crisis has had a stronger impact on men than on women. With the number of women on the labour market already rising in 2016, the SCP expects a further increase as the employment situation improves. Young mothers' labour participation is relatively sensitive to financial incentives. A number of Government measures have been implemented to strengthen these incentives. Other positive findings are the rise in women's level of education and the increase in acceptance of mothers and fathers sharing work and care responsibilities.

190. Modernising care leave and paternity leave, tackling the negative effects of flexible working and improving the quality of childcare will further boost women's labour participation and thereby encourage a change in culture with regard to women's economic independence and men's freedom of choice in taking on care responsibilities. Information and awareness campaigns, sharing best practices and online tools are mentioned by the Government as steps in the right direction.

B – Assessment of the Committee

a) Key figures as regards equal pay in the Netherlands

191. According to Eurostat, in 2017, women's gross hourly earnings were on average 16% below those of men in the European Union (EU-28). In the Netherlands, the hourly gender pay gap stood at 15.2% in 2017, therefore slightly below the EU-28 average. It was 17.8% in 2010, 16.9% in 2012 and 15.6% in 2016. While there has been a decrease in the gender pay gap in the public sector (in 2017, the gender pay gap in the public sector was 12.7%), the gender pay gap in the private sector is persistent (in 2017 it stood at 21.1%). The gender overall earnings gap in the Netherlands stood at 47.5% in 2014 (the average gender overall earnings gap in the EU at that time was 39.6%). The adjusted or "unexplained" gender pay gap is at 8.5% 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

192. 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.

193. 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).

194. 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.

195. 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).

196. 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(98)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).

197. 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.

198. 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.

199. The European Commission 2016 factsheet on the gender pay gap refers to some of the factors that contribute to the gender pay gap in the Netherlands. They include the fact that women take charge of important unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men do; women also tend to spend periods off the labour market more often than men and these career interruptions not only influence hourly pay, but also impact future earnings and pensions; there is segregation in education and in the labour market and this means that, in some sectors and occupations, women tend to be overrepresented while in others men are overrepresented; finally, pay discrimination, while illegal, continues to contribute to the gender pay gap.

200. The Committee further notes that in the “Concluding observations” on the Netherlands prepared by the CEDAW in 2016, it is stated that there is horizontal and vertical occupational segregation, with women being concentrated in part-time work, predominantly because of childcare responsibilities, which adversely affects their career development and pension benefits. CEDAW also pointed out the persistent gender pay gap, which is partly due to the relatively high number of women who work part-time.

201. The Committee takes also note of the information provided by the European Institute for Gender Equality (EIGE) in a 2015 factsheet, in which it evaluated the gender policy in the Netherlands between 1995 and 2015. It stated that the Netherlands has introduced an integrated approach to gender equality in its policy, each Ministry being responsible to implement gender mainstreaming. A special commission, named the *Visitatiecommissie Emancipatie* (VCE), was established in 2004 to examine the level of gender mainstreaming within the Government, which was low in spite of some achievements. The factsheet shows that the measures adopted by the Government were not successful in efficiently fighting existing vertical and horizontal segregation in the labour market and in reducing the gender pay gap.

202. The Committee further notes that the Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the Equal Remuneration Convention (No. 100) in respect of the Netherlands (2014) states

that the gender pay gap remains relatively high. The CEACR asked the Government to cooperate with the social partners in identifying and implementing any additional measures that need to be taken to address the gender pay gap (including measures to address vertical occupational segregation) and to ensure that the part of the difference in pay that is due to discrimination based on sex is accurately examined and addressed.

203. The Committee observes that the Government has collected and analysed data and provided statistics regarding the situation of women in the labour market, satisfying its obligations under the Charter.

204. The Committee further observes that the Government has made efforts to reduce the gender pay gap and has taken measures to raise awareness through gender mainstreaming. Nevertheless, the Committee also observes that the gender pay gap, as an indicator of the effectiveness of these measures, has not changed in a significant manner in recent years. The gender pay gap is persistent and, although slightly below the EU average, it remains high. Segregation exists in the labour market and there is no clear trend for a lower gender pay gap, particularly in the private sector. The measures adopted by the Government have not achieved measurable progress in this respect.

205. In the light of the above considerations, 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

206. Article 20 of the Charter reads as follows:

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

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

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

d) career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

207. UWE states that in the Netherlands, the proportion of women representation in company boards is 23.8%, just above the EU average of 21% of women on the boards of the major listed companies. The country is ranked 9th in the EU.

208. In 2013, the Netherlands passed a law setting a target of 30% for the under-represented sex on the boards of directors of major companies by 2016, with a requirement to meet the quota or provide explanations at annual general meetings. The scheme has been extended to 2020. It is unfortunate that gender parity is not the target, as that is the only acceptable quota. The country expects self-regulation and voluntary commitment to increase the presence of women on the boards of private companies, which explains the middling figure for female board members and, what is more, this is only for the largest companies.

2. The respondent Government

209. The Government states that it is working at both legislative and policy level to ensure that women can reach senior positions. Businesses are encouraged to appoint more women to senior positions. The Government thus fully meets the obligations set out in Article 20 of the Charter.

210. The Government agrees with UWE that the small number of women in senior positions is an issue. The Government believes that equal representation of women in decision-making positions is very important and beneficial to companies. International research has also shown that having homogeneous boards of directors and supervisory boards negatively affects companies' financial results and slows economic growth. Balanced representation of women in board positions is therefore desirable not only from the perspective of gender equality but also for economic reasons.

211. The Government's comprehensive strategy to increase the number of women in board positions in large companies deploys a wide range of instruments, such as legislation, evaluation, monitoring, grants, information campaigns and communication. The Government has chosen to combine a statutory target with an activation policy, and to continuously monitor whether the desired progress is being made. The Government believes that by promoting self-regulation the desired goal of ensuring that at least 30% of management and supervisory board positions at large public limited companies (NV) and private limited companies (BV) are held by women can be achieved.

212. Effective since January 2013, the Management and Supervision Act (WBT) regulates the composition of the management and supervisory boards of large public limited companies (NV) and private limited companies (BV). One component of this act is the statutory target scheme based on Articles 2:166 and 2:276 of the Civil Code. In accordance with this scheme, large public and private companies must wherever possible take gender balance into account when appointing and nominating directors,

drawing up job profiles for supervisory board members (non-executive directors) and when designating, appointing, recommending and nominating supervisory board members (non-executive directors).

213. In accordance with Article 2:166, paragraph 1 and 2:276, paragraph 1 of the Civil Code, gender balance means that at least 30% of board positions are held by women and at least 30% by men. If the statutory target is not achieved, large public and private companies must, under Article 2:391 paragraph 7 of the Civil Code, explain in the directors' report why gender balance has not been achieved, what steps the company has already taken to achieve gender balance in the future and what further steps the company intends to take. This is the 'comply or explain' principle. If no explanation is given, the directors' report is deemed not to have met the statutory requirements and any interested party can, under Article 2:447 in conjunction with Article 2:448 of the Civil Code, request the Enterprise Division of Amsterdam Appeal Court to order the company to draw up the directors' report in accordance with its instructions. With respect to listed companies the Netherlands Authority for the Financial Markets (AFM) is also authorised to submit such a request.

214. In 2015 more than 5,000 companies fell within the scope of the WBT. The statutory target scheme was set to lapse in January 2016 but was extended and will apply until 2020.

215. Since the statutory target was introduced in 2013, progress towards gender balance on management and supervisory boards of large public and private companies has been monitored annually by the Talent to the Top Monitoring Commission. This independent commission was established by the Minister of Education, Culture and Science, which is also responsible for gender equality.

216. In 2014 women held 9.6% of seats on management boards and 11.2% of seats on supervisory boards at the 5,000 companies that fall within the scope of the WBT. At the 200 largest companies, women hold 7.4% of seats on management boards and 19.3% of supervisory board seats.

217. An improvement was observed in 2015: the percentage of women on management boards increased to 9.6% and on supervisory boards to 12.5% for the 5,000 large companies, and to 9.1% and 19.3% respectively for the 200 largest companies. By mid-2016, 18 months after the scheme was launched, the figures for the top 5,000 large companies had risen to 10.2% for management boards and 13.1%

for supervisory boards. The increase among the largest 200 companies was greater: 10.5% of management board members and 21.5% of supervisory board members were women. In light of these figures the Government decided in 2016 to continue its approach. The Monitoring Commission has proposed that the statutory target of 30% be replaced by a quota of 30% in 2020 if by the end of 2019 the number of women on the management and supervisory boards of the organisations that fall within the scope of the WBT has not reached at least 20%. If a quota is introduced, sanctions can be imposed if it is not met.

218. In addition to the statutory framework, the Government employs an activation policy using various policy instruments. Since 2015, the Government and the Confederation of Netherlands Industry and Employers (VNO-NCW) have been collaborating in the 'Women at the Top' programme. This programme focuses on the 200 largest companies in the Netherlands and relevant stakeholders including auditors, works councils, shareholders and recruitment and selection agencies. The programme comprises various measures aimed at drawing attention to the statutory target and ensuring that businesses undertake efforts to achieve it. Examples of measures are a database of board-ready women, a dedicated website (www.nagiverennaardetop.nl), a research-based brochure on the pitfalls in the recruitment and selection procedure, and the launch of the Executive Search Code.

219. The Government has also commissioned research and studies into women's advancement to jobs just below executive level because it appeared that the proportion of women on management boards is increasing more slowly than on supervisory boards, which are usually made up of people from outside the company.

220. A full evaluation of the WBT is currently being conducted. In the context of the evaluation of the impact of the Act, a study of the effectiveness of the statutory target is looking at examples from abroad and the quantifiable results. The findings will be used to analyse how the target could be achieved more effectively, taking into account the type of organisation to which it would apply and their organisational structure and governance model. A qualitative evaluation of the impact of the statutory target is also being conducted; this entails surveying stakeholders' views on the target and analysing their experiences of the Act's effects. The evaluation of the Act is expected to be completed this autumn.

221. The Government states that UWE believes that because the Government has not opted for quotas and sanctions, the obligations arising from the Charter are not being fulfilled effectively. The Government notes that the Charter does not require the introduction of quotas and sanctions. Although it is correct that the WBT does not contain sanctions, it does in fact operate on the 'Comply or Explain' principle. Companies that do not meet the statutory target are required to be transparent about

their efforts to achieve a more equal gender balance. The number of companies is approximately 5,000. Finally, although the Government acknowledges that there are only a few good examples, UWE's statement that no management boards are chaired by women is inaccurate, as there are a few cases of management boards chaired by women.

B – Assessment of the Committee

222. 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).

223. 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%.

224. 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.

225. As regards the Netherlands, the Committee notes that according to data provided by EIGE up to April 2019, the proportion of women on the management boards of the Netherlands' largest listed companies is 32.6%. It was 30% in 2017. In 2010, women represented 14.9% in the largest listed companies.

226. The legislation in the Netherlands does not establish quotas or sanctions but has introduced since January 2013 a 'comply or explain' principle for enterprises. This principle implies that at least 30% of management board positions have to be held by the under-represented sex. If the statutory target is not achieved, large public and private companies must explain in the directors' report why gender balance has not

been achieved, what steps the company has already taken to achieve gender balance in the future and what further steps it intends to take. No sanctions apply if the principle is not respected.

227. The Committee further notes the 2017 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (CESCR) regarding the Netherlands, which pointed out the large number of women working part-time (considerably higher than the European Union average), the low number of women in decision-making positions and the low proportion of women on company boards of directors.

228. The Committee observes that the Government acknowledges that women are not sufficiently represented in decision-making positions in private companies and that it has taken steps and adopted legislative and policy measures to address the problem, extending the legislative target of 30% minimum representation of women until 2020. Although the measures adopted have not yet made it possible to achieve the recommended goal of at least 40% of women representation, there has been a substantial improvement in the situation, which has increased from a 14.9% in 2010 to 32.6% in 2019.

229. Therefore, the Committee holds that there is no violation of Article 20.d of the Charter concerning the measures taken to ensure a balanced representation of women in decision-making positions within private companies.

IV. REQUEST FOR COMPENSATION

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

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

CONCLUSION

For these reasons, the Committee concludes:

- as regards recognition and enforcement of the right to equal pay for work of equal value,
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 8 votes to 7, that there is no violation of Articles 4§3 and 20.c of the Charter as regards access to effective remedies;
 - unanimously, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is not ensured;
 - unanimously, 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;
- unanimously, that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions within private companies.



Eliane CHEMLA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary