

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



16 December 2016

Case Document No. 2

University Women of Europe (UWE) v. the Netherlands
Complaint No 134/2016

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 29 November 2016



Ministry of Foreign Affairs

European Committee of Social Rights
Att. Mr Henrik Kristensen
Deputy Executive Secretary

**Legal Affairs Department
International Law Division**

Bezuidenhoutseweg 67
2594 AC The Hague
The Netherlands
www.government.nl

Contact

Roeland Böcker

T +31 70-348 4898

F +31 70-348 5128

roeland.boecker@minbuza.nl

Date 29 November 2016
Re University Women of Europe (UWE) v. the Netherlands
Complaint No. 134/2016

Dear Mr Kristensen,

In reply to your letter of 27 September 2016, I have the honour, on behalf of the Government of the Netherlands, to submit the following with regard to the above complaint before the European Committee of Social Rights ('the Committee') under the 1995 Additional Protocol ('the Protocol') to the European Social Charter ('the Charter').

First of all, I wish to convey my Government's concerns with regard to the procedural choices made by the Committee. Whereas the letter of complaint was received in good order by your above letter, it was not before 2 November – i.e. more than a month later and two days before the expiration of the deadline set for the submission of observations on the admissibility of the complaint – that an internet link giving access to no less than seventy-two appendices was received. On the same day, we were informed that a translation of the letter of complaint into English was being prepared at the Committee's initiative. This translation was ultimately received on 16 November.

Not only was your letter of 27 September silent on the issues of appendices (contrary to the complaint itself) and translation, no extension of the above deadline was proposed either, leaving it to the Government to request such extension.

Furthermore, my Government regrets that no mention was made in your letter of the fact that the same complaint had been lodged against all other member states having ratified the 1995 Additional Protocol to the European Social Charter, although this fact is potentially of great relevance to the assessment of its admissibility and merits.

In the light of this course of events, the Government urgently requests the Committee – in subsequent stages of the proceedings, if any – to provide *all* available documents to *all* parties and to grant realistic deadlines for the submission of observations.

Having become aware of the submission of fifteen similar complaints, it was agreed between the Government Agents that each of the respondent states will formulate its own observations on admissibility. Nevertheless, with regard to the conditions for admissibility set out in Articles 1 to 4 of the Protocol, the Dutch Government wishes to refer to the observations on admissibility submitted by other respondent states, *inter alia* the Czech Republic, that forwarded its observations at an early stage. The Government respectfully requests the Committee to express its opinion on these admissibility conditions, if need be *ex officio*, also in the present proceedings against the Netherlands.

Date
29 November 2016

In addition, the Government observes that conditions for admissibility are not exclusively found in the text of the Protocol itself, but may be construed from other sources also. The explanatory report to the Protocol provides that Article 4 "*lays down three admissibility conditions which were deemed sufficiently important to be specifically mentioned in a separate article of the Protocol*". This formulation implies that other conditions may exist.

In that regard, the Government points out the following. Paragraph 2 of the explanatory report to the Protocol provides that "*[t]he system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter*". This formulation implies that the reporting procedure is the primary procedure, the complaints procedure being complementary to the former, not the other way around. While the reporting procedure is designed to address the level of implementation of the Charter in the member states in the broadest sense of the word, the complaints procedure requires a certain measure of specificity, drawing the Committee's attention to a perceived lack of implementation in a specific context. The added value of the complaints procedure is particularly relevant where such specific context has not been addressed in the framework of the reporting procedure, for instance because the Committee was not aware of a certain interest. The distinction between both procedures is important in order to avoid a mixing up of two conventional instruments and jeopardizing the reception of the Committee's reports in the member states.

Due to its nature and scope, the present complaint is tantamount to an *alternative*, not a complement to the reporting procedure. This conclusion is based on the following considerations.

First of all, the complaint is lodged against fifteen states parties to the European Social Charter. This number can only be inspired by the fact that only these states have ratified the Protocol. Had any other states done so, the complaint would presumably have been lodged against those states as well, if only because the facts underlying the complaint are by no means exclusive to states having ratified the Protocol.

Secondly, the group whose interests the complainant organization seeks to defend potentially consists of one half of the labour force in the respondent states. The choice of words in the complaint would even suggest that the interests of *all* women in the respondent states are addressed. This reinforces the conclusion that the collective element, inherent to the complaints procedure under the European Social Charter, is taken to its extremes, thereby rendering the procedure in reality an alternative reporting procedure.

Date
29 November 2016

Further considerations argue against the admissibility of the present complaint. The complaint is characterized as a political manifesto, targeting not only Governments – as it should – but also employers, parents, husbands, the *Académie Française* and even the Council of Europe and its monitoring bodies. The complainant organization in essence alleges that the existing national and international structures do not provide the result desired. Whatever the merits of that allegation, it is not the kind of issue that lends itself to scrutiny under the quasi-judicial procedure laid down in the Protocol.

For all these reasons, the Government respectfully requests the Committee to declare the present complaint inadmissible.

Yours sincerely,



Agent of the Government of the Netherlands