



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

11 April 2017

Case Document No. 3

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

**RESPONSE FROM UWE TO THE GOVERNMENT'S
OBSERVATIONS ON ADMISSIBILITY**

Registered at the Secretariat on 20 March 2017

Collective complaint
No. 134 /2016

European Committee of Social Rights
Secretariat of the European Social Charter

REPLY TO THE OBSERVATIONS ON ADMISSIBILITY

Claimant: University Women of Europe, UWE /

Groupe Européen des Femmes Diplômées des Universités, GEFDU

Represented by Ms Anne Nègre, member of the Versailles Bar

10 avenue du Général Mangin, 78000 Versailles - France

Tel. +33 (1) 39 54 65 12 - +33 (6) 86 46 23 09 - anne.negre@orange.fr

Respondent: the Netherlands

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

By letter dated 29 November 2016, the High Contracting Party, the Netherlands, represented by Mr Roeland Böcker, Agent of the Government of the Netherlands, stated its opinion that the collective complaint submitted by the UWE should be declared inadmissible by the European Committee of Social Rights.

By letter dated 31 January 2017, Mr Kristensen, Deputy Executive Secretary of the European Committee of Social Rights invited the UWE to present its reply to the states' observations by 28 February 2017. The same day, the UWE asked to benefit from the same treatment as that accorded to states, by being provided with a translation of their observations in order to avoid any misinterpretations. On 7 February 2017, the UWE was informed that the deadline would be adjusted to one month following the forwarding of the translation of the observations. The French translation was sent on 23 February 2017.

It will be clear to the European Committee of Social Rights, in the light of the explanations given in this reply, that the collective complaint lodged by the UWE should in contrast be found to be admissible.

1. On The Netherlands' comments regarding paragraph 2 of the Explanatory Report to the Additional Protocol of 1995

The Netherlands considers that the fact that UWE has submitted collective complaints against 15 States Parties to the Social Charter which have ratified the Protocol would seem "to suggest an alternative, and not a complementary procedure" (Observations the Netherlands, page 2).

There is no hierarchy in the reporting or collective complaints procedure, and neither is subordinate to the other.

Collective complaints are not designed to replace or duplicate the supervision cycles; they are another procedure. States can be the subject of a collective complaint even if they address subjects which are also being examined in the supervision cycle. In this way, they afford the opportunity to highlight and go deeper into certain aspects.

In this way, it is possible to avoid too long a time to elapse between verifications of conformity of the policies pursued with certain articles, as the intervals between these verifications may be considerable.

Furthermore, a qualified organisation such as the UWE has no way in practice of suggesting a report on any violation whatsoever. It can neither initiate such a report nor contribute to it.

This democratic remedy, established in 1995, is a way of opening out to civil society. The fact of highlighting this failure to comply with the European Social Charter in respect of equal pay between women and men is a means of reinforcing the supervision of states.

Accordingly, if one concurs with the arguments submitted by the Netherlands, the fact of submitting a complaint against 15 States Parties is a ground for inadmissibility in itself. But where is the text that forbids this?

There is nothing in the observations submitted by the Netherlands that supports non-recognition of UWE's standing, and the UWE should be declared competent.

2. On the relevance of the allegations in the collective complaint

The UWE's statement of facts is criticised by the Netherlands, but the reality of the extent of pay inequality is such that on 8 March 2017, International Women's Day, in all the countries against which a collective complaint has been lodged, the media gave widespread coverage to this pay inequality and reported on the many and varied demonstrations on this issue, often with a strike by women in the second half of the afternoon.

All the documents submitted prove that there is unequal pay for equal work between men and women. One only has to itemise them to see that the Social Charter has been violated, since there is an actual, proven and inescapable situation which is publicly acknowledged throughout the reports submitted by the state itself. Are the state's own words not to be considered reliable when it acknowledges this inequality before institutions such as the International Labour Organisation (ILO) and the Committee on the Elimination of Discrimination against Women (CEDAW) or when it itself explains the weaknesses in its policies?

The European Committee of Social Rights must take due note of this.

The UWE cannot but be astonished by the Netherlands' tendentious arguments to have the complaint declared inadmissible and to avoid a debate on the merits, namely a clear and unmistakable inequality of pay between women and men for equal work.

3. On the so-called political motivation alleged by the Netherlands

The Netherlands challenges the contention that unequal pay between women and men for equal work is rooted in the culture and derives from history and the slow pace of policies pursued in recent years as a result of serious obstacles preventing equal pay from being implemented.

A decision on admissibility was recently delivered by the ECSR in a case having a general scope, which was challenged by Greece (Greek General Confederation of Labour v. Greece Complaint No. 111/2014).

And yet, since Plato in "The Statesman", a distinction has been drawn, which has been further developed over the centuries, between party politics, the preserve of political parties, a necessarily partisan ideology to be implemented, and politics in the much broader sense, as promoted by civil society, independent of any ideology or political party.

The UWE is independent of all political parties. It is therefore odd that the representative of a government whose members have been brought to power by means of elections based on an ideology, should make such an allegation against the UWE.

Legal remedies are available to different applicants through legal instruments. The European Social Charter is one of these instruments as it is viewed by some as the social constitution of Europe, making it possible, in a totally unique way, for a collective complaint to be submitted, in the first instance, to a committee comprising judges of the highest level, independent of the states which have appointed them. It is to the credit of the Council of Europe and its member states that such a quasi-judicial body has been established.

While the aim is to spotlight the situation in many countries of Europe, the failings at national level are clearly set out for each country in each complaint. Drafting the complaint was a long and arduous endeavour, as it was wished to facilitate the task of the rapporteurs. However, apart from the statement of facts and the highlighting of this manifest, persistent and abnormal situation of inequality in the various countries, each complaint is entirely tailored to each country. One needs only to read them to see the specific and precisely substantiated issues raised which are different for each country.

This inequality is to be found in the Netherlands, and in other countries, as has been proved by the UWE. And this situation has, as its corollary, the violation of the revised European Social Charter.

There is, accordingly, no political motivation in the sense of partisan ideology on the part of the UWE and the UWE's action must therefore be declared admissible.

4. Concerning the number of collective complaints and consultation among states

The European Committee of Social Rights will notice similarities in the observations of certain states. Indeed this consultation is confirmed by the observations of the Netherlands in which it is stated (page 1, paragraph 6): *“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.”*

Is this decision to engage in consultations among the states concerned any more normal than a joint action, under the auspices of an accredited INGO – the UWE – by national women's movements not authorised to act directly? Is it not intended to paralyse the attempt to highlight violations by the states that are signatories to the Charter of the undertakings they have entered into?

Is it not the case that the question of equal pay between women and men is such a burning issue that it should of necessity be examined on the merits by the European Committee of Social Rights?

- One criticism from this country is more paradoxical, it “*wishes to refer to the observations on admissibility submitted by other respondent states, inter alia the Czech Republic*”.

The collective complaint lodged against the Netherlands is autonomous and is addressed to that country alone. It is not possible to assume ownership of the observations of another state for different complaints. The texts referred to and the facts criticised were specific to the Netherlands, as the Committee will no doubt be aware. The confusion caused by the Netherlands is of particular importance when, in addition, one becomes aware of the means put in place by the states to challenge the very principle of this collective complaint on equal pay between women and men.

There is no text which prevents one from finding the same violation in the States Parties. Fifteen collective complaints were indeed submitted, in accordance with the rules, on 24 August 2016. Out of respect for the ECSR rapporteurs, these complaints have a common basis, which required a great deal of work. And, as far as possible, an attempt has been made to ensure that the replies also contain harmonised arguments. This type of presentation shows the common points rooted in the states concerned, but do not alter the proof given that this violation is to be found in each state, with specific factors which relate to the Netherlands, as shown by the documentation submitted. The Netherlands cannot in such an indiscriminate and vague way refer to the observations submitted by other states, without naming them all.

Moreover, other states against which the same collective complaint has been lodged have not found any grounds for inadmissibility and have therefore not written any observations as to the admissibility of the UWE’s action.

In the light of the observations of this country, the UWE’s complaint should therefore be declared admissible.

ON THESE GROUNDS

AND SUBJECT TO ANY THAT MIGHT BE RAISED IN ADDITIONAL MEMORIALS OR MENTIONED AT
A HEARING

The European Committee of Social Rights is asked to confirm the competence of the University Women of Europe, UWE / Groupe Européen des Femmes diplômées des Universités, GEFDU to lodge a collective complaint against the Netherlands,

and to examine this collective complaint on the merits.

Without prejudice
19 March 2017

