



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

28 February 2018

**Case Document No. 7**

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

**RESPONSE FROM THE UWE TO THE GOVERNMENT'S  
SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 9 February 2018**



**Collective Complaint  
No. 134 / 2016  
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**European Committee of Social Rights  
Secretariat of the European Social Charter**

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**RESPONSE TO THE SUBMISSIONS ON THE MERITS**

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In : Groupe Européen des Femmes Diplômées des Universités, GEFDU  
University Women of Europe, UWE

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v. : the Netherlands

## MAY IT PLEASE THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

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### I. PROCEDURE

University Women of Europe, UWE / le Groupe Européen des Femmes Diplômées des Universités, GEFDU, lodged a collective complaint against the Netherlands on 24 August 2016 regarding two violations of the European Social Charter:

- Firstly, concerning the lack of equal pay for women and men for equal, similar or comparable work,
- Secondly, concerning the under-representation of women in decision-making posts in private companies.

By letter dated 26 November 2016, the Netherlands, represented by Mr Roeland Böcker, Government Agent, requested that the European Committee of Social Rights declare the collective complaint by UWE inadmissible.

By letter dated 31 January 2017, Mr Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights, invited UWE to submit a response to the states' observations by 28 February 2017. The same day, UWE requested equal treatment with the states in terms of receiving translations of the observations so as to avoid any misinterpretations. On 7 February 2017, UWE was notified that the deadline for submitting the responses was extended to one month after transmission of the translation of the observations. The French translation was sent on 23 February 2017.

UWE submitted its response to the respondent state's observations on admissibility on 19 March 2017. On 15 May 2017, the Netherlands submitted a further response to UWE's observations on admissibility.

On 4 July 2017, during its 293rd Session, the European Committee of Social Rights "declare[d] the complaint admissible in respect of Articles 1, 4, 4§3, 20 and E of the Charter".

The European Committee of Social Rights "invite[d] the Government to make written submissions on the merits of the complaint by 13 October 2017". This deadline was extended to 3 November 2017 by letter dated 21 September 2017. On 3 November 2017, the Netherlands submitted its submissions on the merits in English; the deadline for UWE's response was set at 9 February 2018, taking account of the time required for translation.

In its submissions on the merits of the complaint, the respondent state held that the collective complaint by UWE should be declared unfounded because the Netherlands complied with the provisions of the Charter, and rejected UWE's claim for compensation for the time spent and expenses incurred in the current proceedings.

The European Trade Union Confederation, ETUC, intervened in the procedure on 3 November 2017 and submitted substantive observations on the merits:

"This collective complaint – as all the other 14 complaints concerning the same issues – is of great importance for the full realisation of the very fundamental right of women to non-

discrimination. In particular, the continuous denial of equal pay for work of equal value is one of the fundamental problems which still remain in European societies.

From the ETUC's point of view it is necessary to come to the following conclusions of a violation of Article 20 of the Charter in relation to

- the Gender pay gap in its substantive (see above II.C.1.a)) and procedural dimensions (see above II.C.1.b)) as well as in relation to
- the under-representation of women in decision-making bodies also in its substantive (see above II.C.2.a)) and procedural (see above II.C.2.b)) dimensions.

The Committee might thereby also in particular consider to take account of the recommendations/observations/concerns expressed by the international bodies referred to in II.A. addressed to the respondent state" (ETUC, § 114 to 116).

UWE takes account of these observations and refers to them. UWE also reiterates the points in its complaint of 24 August 2016.

UWE would add here the European Pillar of Social Rights adopted on 17 November 2017 by joint declaration of the European Parliament, the Council of the European Union and the European Commission, committing member states to guarantee social rights in Europe through 20 principles. Principle 2, on gender equality, provides as follows:

**“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.**

Women and men have the right to equal pay for work of equal value” ([https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en), Article 2).

In view of the observations in response, the European Committee of Social Rights will find violations of the Social Charter in respect of the aforementioned Articles 1, 4, 4§3, 20 and E on account of the lack of equal pay for women and men for equal, similar or comparable work and the under-representation of women in decision-making posts in private companies.

## II. THE OVERALL ARGUMENTS OF THE RESPONDENT STATE

The European Committee of Social Rights regularly reiterates the following:

“The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality, solidarity and other generally recognised values. It must be interpreted so as to give life and meaning to fundamental social rights” (FIDH v. France, Complaint No. 14/2003, 8 September 2004, § 27, 29; DCI v. the Netherlands, Complaint No. 47/2008, 20 October 2009, § 34).

It was in this spirit of promoting dignity, autonomy, equality and solidarity so as to give life and meaning to fundamental social rights that UWE lodged this collective complaint concerning female workers in Europe and, more particularly, in the respondent state. These

women are still waiting for equal pay for women and men and to be able to hold decision-making posts in line with their abilities on an equal footing with men.

There is total unanimity among all information sources and academic publications, all public and private research conducted at national, European or international level and communicated in whatever form, the statistics produced by the respondent states themselves and those from other states, and the reports by the ILO, the CEDAW, the various national, European and international institutions, as well as various forums and colloquies, that pay for women and men is unequal in all countries and that women are under-represented in decision-making posts.

The outlook of the world in which European men and women currently live is still, as ever, exclusively masculine.

Even though equality in wage terms is a driving force for the economy, even though the now-quantified cost of the violence against women in terms of unequal pay may represent a very large share of national budgets and even though remedying this would help to empower women and to combat this terrible scourge in our societies, equal pay for equal work and equal representation in decision-making posts are both sorely lacking in the Netherlands.

The World Economic Forum Global Gender Gap Report (2016) estimated that it would take 170 years to close the gender gap ([http://www3.weforum.org/docs/GGGR16/WEF\\_Global\\_Gender\\_Gap\\_Report\\_2016.pdf](http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf)).

In 2016, the Netherlands was ranked 16th on the global gender gap index (ibid., p. 10).

The Global Gender Gap Report (2017) estimated that it would now take 217 years to close the global economic gender gap ([http://www3.weforum.org/docs/WEF\\_GGGR\\_2017.pdf](http://www3.weforum.org/docs/WEF_GGGR_2017.pdf), p. viii).

In 2017, the Netherlands was ranked 32nd on the global gender gap index (ibid., p. 10).

No country in Europe meets the requirements of the Social Charter, in terms either of equal pay for women and men for equal, similar or comparable work or of the representation of women in decision-making posts, according to an analysis from July 2017 by the European Network of Legal Experts in Gender Equality and Non-Discrimination entitled “The enforcement of the principle of equal pay for equal work or work of equal value” (<http://www.equalitylaw.eu/downloads/4466-the-enforcement-of-the-principle-of-equal-pay-for-equal-work-or-work-of-equal-value-pdf-840-kb> ).

On 20 November 2017, the European Commission communicated to the European Parliament, the Council and the European Economic and Social Committee its “EU Action Plan 2017-2019: Tackling the gender pay gap”, setting out eight strands of action:

- “1 - Improving the application of the equal pay principle
- 2 - Combating segregation in occupations and sectors
- 3 - Breaking the glass ceiling: initiatives to combat vertical segregation
- 4 - Tackling the care penalty
- 5 - Better valorising women’s skills, efforts and responsibilities
- 6 - Fighting the fog: uncovering inequalities and stereotypes
- 7 - Alerting and informing about the gender pay gap

8 - Enhancing partnerships to tackle the gender pay gap”  
([ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48424](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48424)).

The 1919 Versailles Treaty, on which the League of Nations was founded, provided the following (Article 427, § 7): “The principle that men and women should receive equal remuneration for work of equal value” ([https://en.wikisource.org/wiki/Constitution\\_of\\_the\\_International\\_Labour\\_Office#Article\\_427](https://en.wikisource.org/wiki/Constitution_of_the_International_Labour_Office#Article_427)).

In 2017, this principle is still not respected for all female workers.

You have to be very far removed from the reality of life in a private company to be unaware of the sense of betrayal felt by women who are underpaid on account of their gender. The vast majority of these women end up resigning themselves to the violations of their fundamental rights because criticising the violations is not well received in the companies themselves, in their families, among their friends or, in many cases, by the judicial system. When women workers actually notice pay gaps (although they are hardly ever able to prove them), the differences are often presented to them as being linked to them as individuals, their more limited performance, their more limited ability, their more limited flexibility or their more limited communication – always something more limited. Accordingly, very few women decide to bring legal proceedings against their employers.

Any attempts to bring such proceedings usually come up against refusal by the employers to answer requests for information, a lack of testimonies from colleagues and a lack of support from staff representatives. The relevant information is only rarely sought out by the authorities which have the power to do so. While proceedings may be successful, this will be after years of painful, time-consuming, costly and uncertain struggles. In the event of successful proceedings, employers are usually annoyed at having to pay out potentially large sums and harbour grudges against female employees who dared to bring proceedings. That is a fact. It is therefore necessary to warn women workers who are willing to bring such proceedings about the future risks of dismissal, usually for other reasons. For employers are aware of the penalties in place in various respondent states. That is common knowledge, although it is denied by the respondent states in their observations, which shows how wide the gap is between governments and practices on the ground.

“Individual proceedings are hard to bear psychologically. Women who do go ahead take great risks and they must be protected” (Rachel Silvera, article in French, [http://www.lemonde.fr/societe/article/2014/03/06/rachel-silvera-la-peur-de-la-sanction-est-un-axe-de-lutte-fort-pour-l-egalite-salariale-hommes-femmes\\_4378483\\_3224.html#3EeScStlwyXdOyTd.99](http://www.lemonde.fr/societe/article/2014/03/06/rachel-silvera-la-peur-de-la-sanction-est-un-axe-de-lutte-fort-pour-l-egalite-salariale-hommes-femmes_4378483_3224.html#3EeScStlwyXdOyTd.99)).

With regard to equal pay and treatment, a Belgian flight attendant, Gabrielle Defrenne, was one of the first women to bring such proceedings, demonstrating great courage and perseverance. She appealed to the Brussels Employment Tribunal in 1970; the proceedings finally ended 10 years later (Cass. 3e ch., 5 May 1980, Pas., 1980, 1095). The case went through the domestic and European courts. Is that what states expect from the millions of short-changed women workers? Must they bring proceedings lasting ten years at their own expense?

At best, states tell women that they have all the rights they need but fail to assert them, so it is their fault if their pay is lower than their male counterparts'. This is a ruthless syllogism.

## **2.1. The conclusions of conformity**

The respondent state seeks to rely on the conclusions of conformity concerning Articles 4§3 and 20 issued regarding its policy by the European Committee of Social Rights during recent supervision cycles. The fact that the European Committee of Social Rights has not during those supervision cycles found that the policies implemented failed to comply with the Charter does not mean that its analysis covered all the aspects raised by this complaint, in particular because it did not have adequate information for that purpose and for the cause to be heard.

Accordingly, the European Committee of Social Rights may acknowledge that the standards in question are in line with the Social Charter but that the practices are disappointing or derisory and are therefore unacceptable.

Moreover, the respondent state emphasises that it responded satisfactorily to the three or four requests by the Committee for more information. However, the Committee did not request additional information regarding other subjects where that was necessary. The submissions by the Netherlands in this respect must therefore be regarded as irrelevant.

## **2.2. The nature of the respondent state's obligations**

The respondent state against which UWE has lodged a complaint based on Articles 1, 4 §3, 20 and E of the Social Charter reiterates in its submissions, probably on a concerted basis with other respondent states, the idea already put forward in the observations on admissibility, and which did not achieve the desired aim at that stage, whereby the Charter does not impose an obligation of results but merely of means – or, to put this another way but with the same effect, only imposes an obligation of results in terms of passing legislation that meets the requirements of the Charter and possibly setting up institutions to ensure its enforcement, but not in terms of achieving the objectives set.

This is completely at odds with the established case law of the European Committee of Social Rights, which incidentally is cited by some countries, whereby the Social Charter is only complied with, admittedly subject to some exceptions, if legislation in line with its requirements is introduced. That is not enough, however.

In this connection, it is only necessary to refer to the European Committee of Social Rights' well-established case law (*International Commission of Jurists v. Portugal*, Collective Complaint No. 1/1998, 9 September 1999; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, 5 December 2007, §54; *International Federation for Human Rights (FIDH) v. Ireland*, Complaint No. 110/2014, 23 October 2017).

States also know that they must provide the means of ensuring steady progress towards achieving the goals laid down by the Charter (*Autism-Europe v. France*, Complaint No. 13/2002, 4 November 2003, §53). The Committee wishes to emphasise that



implementation of the Charter requires states parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein. It points out that states parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.

The Committee further stresses that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Movement ATD Fourth World v. France, Complaint No. 33/2006, 5 December 2007, § 60 to 67):

“This means that, for the situation to be in conformity with the treaty, states party must:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter,
- b) maintain meaningful statistics on needs, resources and results,
- c) undertake regular reviews of the impact of the strategies adopted,
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage,
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable”.

The fact that a set of relatively formal legal documents (constitution, laws, etc.) prohibit all gender discrimination and provide that equal treatment must be ensured in practice does not mean that the relevant provisions are actually implemented. Likewise, explicit or implicit references to integrated policies, synergies or networks do not mean that approaches of that kind take hold. Vagueness is not acceptable.

The legislation must therefore produce sufficient effects, through appropriate monitoring and administrative supervision mechanisms that are reasonably regular and effective and judicial remedies that are accessible and reliable, i.e. which 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, which the European Committee of Social Rights has held should be regarded as applicable for meeting the requirements of the Charter, in the same way as the concept of indirect discrimination, the provision of evidence for which requires applicants to have access to comparative information that does not identify individuals but provides sufficient insight into the treatment of colleagues or other categories of workers, in order to provide the courts with enough indications for the burden of proof to be placed on the defendants.

Those bringing proceedings must also be protected against any kind of retaliatory measures. Discounting these very ordinary and routine day-to-day retaliatory measures means being very unfamiliar with these issues in the daily lives of women workers.

At the same time, there must be systematic awareness-raising for all parties concerned with the issue of gender equality in employment, pay and positions of responsibility, and the necessary funding must be provided for support measures, in particular, childcare options and all work-life balance measures capable of compensating for the stickiness in representation and the distribution of social roles.

Lastly, 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. Neither reducing matters to criminal law nor going too far in the direction of decriminalisation is acceptable. Training for judges, police officers, labour inspectors and other groups is also vital. The EU has produced best practice guides in this connection ([http://www.equineteurope.org/IMG/pdf/handbook\\_on\\_equal\\_pay\\_-\\_electronic\\_version-2.pdf](http://www.equineteurope.org/IMG/pdf/handbook_on_equal_pay_-_electronic_version-2.pdf)).

In the present case, the information provided by the respondent state – and it is odd that the submissions made regarding the complaints in question criticise the general nature of the complaints while the state itself mostly only makes general comments – 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. This prevents proper assessment regarding the following:

- the relevant powers, staffing levels, numbers of checks, funding, administrative supervisory bodies
- the efficiency of judicial regulation, proceedings, costs, independence, reliability
- the scale of supporting and awareness-raising policies and their proportionality in relation to the seriousness of the stereotypes to be eradicated
- the relevance and accuracy of the figures and statistics supplied, if any, which are mostly too broad or too limited whereas there are public documents from another source which provide more sophisticated or more extensive information
- the lack of a timetable for the measures introduced, the expected evaluation of the results within given timeframes
- case law in the country is almost non-existent and therefore has no impact.

The wide range of relevant bodies between which powers that in any case are limited are shared in a manner probably unclear to the women workers concerned is less a sign of dynamism than of dispersion of the efforts made by the Netherlands.

It is accordingly in vain that the respondent state, having failed to provide the above-mentioned clarifications either directly or by making specific reference to other accessible and informative sources, refers insistently to the recent adoption of a new body of rules and the recent setting up of new institutions.

However promising they may be, these initiatives do not allow the conclusion that the state concerned has succeeded in meeting the requirements of the Charter. The European Committee of Social Rights has always held that it could not regard the introduction of new rules or new institutions – for which it cannot be predicted whether or not they will produce significant effects within a reasonable time – as contributing from the outset to the conformity of states' policies with the Charter.

### **2.3. The impact of the crisis**

The European Committee of Social Rights has, admittedly, consistently acknowledged that states could not all achieve the objectives set out in the Charter and, as appropriate, any

national legislation for that purpose without regard being had to their social conditions, degree of economic prosperity or any adverse circumstances.

However, in the case of gender equality as in other areas, the crisis cannot serve as a pretext for totally or partially giving up the implementation, and still less the pursuit, of the objectives set out in the Charter or legislation passed to implement it, or for placing limits on the efforts involved.

In view of these requirements, the respondent state manifestly fails to meet the specific obligations of the Social Charter; there is a clear lack of resource planning and result measurement. The Social Charter is clearly violated in respect of both complaints.

### **III. THE COMPLAINT OF UNEQUAL PAY FOR EQUAL WORK**

#### **3.1 The lack of appropriate measures**

In its reply, the respondent state merely refers to the applicable legislation and the major public policy exercises such as the various equality plans which are vital in mobilising the various stakeholders. However, there is no sign of gender mainstreaming in the policies concerned, decision-making, access to resources, procedures and practices, methodology, implementation, monitoring or evaluation. There is no monitoring body and, above all, no checks are provided for or carried out. These are significant shortcomings.

Little or no account is taken of many areas, for instance, the courses of study chosen by women, which all too often are non-scientific and unambitious, the greater number of vocational training courses of a higher standard available for men, the large number of benefits in kind for men and the small number for women, horizontal and vertical segregation in employment, the centuries-old division of roles in the family, with no economic value being attached to the time spent on housework, forced part-time working, and failure to ensure proper work-life balance.

The recent coalition agreement of the new Netherlands government from October 2017, “Trust in the Future” (<http://www.dutchnews.nl/news/archives/2017/10/trust-in-the-future-the-coalition-agreement-main-points/>), does not seem to include specific measures concerning the emancipation of women, in particular the issue of equal pay. 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.

Given the inadequacy of the conventional tools for combating discrimination and protecting victims, the respondent state has failed to take appropriate measures, in particular with regard to a number of points examined below.

The CEDAW Committee draws the respondent state’s attention to “the structure of the national machineries for the advancement of women’s rights and the co-ordination of gender mainstreaming in all territories of the State party” (Committee on the Elimination of Discrimination against Women, Sixty-fifth session, 24 October-18 November 2016, <http://undocs.org/en/CEDAW/C/NLD/Q/6>).

It is worthwhile also mentioning some questions put: “Please provide information on the progress made in closing the gender wage gap, including the follow-up measures required to combat discrimination in the labour market, given the issuance of the advisory report of the Social and Economic Council of the Netherlands (SER) (para. 55). Please state measures that are in place to ensure women’s access to full-time and part-time employment and their career progression.

What measures are envisaged to tackle gender disparity in terms of pension contribution, which may be responsible for old-age poverty among women in the State party (paras. 66, 68 and 69)? It is indicated that ethnic minority women work longer hours than women of Dutch origin (para. 35)” (ibid., § 16 et seq.). These points were already noted in the Netherlands report to the CEDAW Committee in 2015 (<http://undocs.org/en/CEDAW/C/NLD/6>).

- **The employment equality policy** is not fully effective. It is disparate in nature and refers to negotiation at company level. It is also inconsistent. The various bodies are not provided with basic training in gender mainstreaming to enable them to implement internal plans or measures. There is no general framework. The respondent state must therefore introduce one, as an overall change is needed to eradicate inequality and discrimination.
- **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 – contrary to the respondent state’s assertions.

While the Netherlands Institute for Human Rights (CRM/NIHR) is an independent body which 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. Discrimination has to be presumed, the burden of proof is only partially reversed.

“The annual budget of the NIHR for 2014 amounted to EUR 5.7 million. An independent evaluation conducted in 2015 found that the budget should be at least EUR 5.8 million, while the NIHR itself requested EUR 7.4 million. However, the minister responsible refused to increase the budget” (European Network of Legal Experts Country report, Non-discrimination, 2017; <http://www.equalitylaw.eu/downloads/4352-the-netherlands-country-report-non-discrimination-2017-pdf-1-63-mb>, p. 9). At the same time, Spain has just released €1 billion over five years to combat these inequalities.

The information supplied shows that there is a useful and necessary range of action and that there is real inequality and discrimination in the country but that the number of admissible complaints is low and is far below the actual number of cases of inequality (respondent state’s submissions, § 18 et seq.). It is unclear whether complainants received compensation in terms of back-pay, without being time-barred, or also in terms of career advancement. Did they receive settlement payments? An employee who brings proceedings upon retirement, for instance, or upon termination of her contract will be able to claim only five years of back-pay (respondent state’s submissions, § 45).

The state indicates that the position regarding reversal of the burden of proof of discrimination differs 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. 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 respondent state, there is no indication of the result of such reversal (European Network of Legal Experts Country report, Non-discrimination, 2017; <http://www.equalitylaw.eu/downloads/4352-the-netherlands-country-report-non-discrimination-2017-pdf-1-63-mb>). The latter report states that “the requirement that sanctions need to be ‘effective’, ‘dissuasive’ and ‘proportionate’ seems not to be met by the Dutch legislation” (ibid., p. 10).

An analysis entitled “Discrimination doesn’t work”, which criticises the system in the Netherlands, is interesting in this connection (<https://www.ser.nl/en/publications/publications/2014/discrimination.aspx>).

Other discriminating factors relating to racism also exist and will further delay equal pay in companies (<https://iwpr.org/issue/employment-education-economic-change/pay-equity-discrimination/>).

A further source of discrimination is women’s position in the scientific and technical sectors in the Netherlands. The country has one of the lowest percentages of women in the scientific and technical sectors in the EU, although they are expanding rapidly and offer better prospects for employees. However, no action appears to be taken to remedy the situation and, for instance, prevent too many girls being confined to education and training courses that lead only to jobs with a low status rather than encouraging them to undergo scientific or technical training ([https://www.intermediair.nl/carriere/een-baan-vinden/branches/Passen-vrouwen-en-de-technische-branche-wel-bij-elkaar?policy=accepted&utm\\_referrer=https%3A%2F%2Fwww.google.nl%2F](https://www.intermediair.nl/carriere/een-baan-vinden/branches/Passen-vrouwen-en-de-technische-branche-wel-bij-elkaar?policy=accepted&utm_referrer=https%3A%2F%2Fwww.google.nl%2F)).

- **Lack of supervision:** The respondent state refers to the remedies in place and the tasks of the labour inspectorate, which do not cover the issues complained of. “Its tasks do not include monitoring pay-related issues involving individual employees, as this would be impracticable, due to the extensive assessment these cases would require” (respondent state’s submissions, § 26). The tone of this assertion is worrying; workers are not able to report their circumstances to the authorities and the labour inspectorate has no powers here.

Few complaints are made to the NIHR regarding unequal pay for women and men for equal work, there are no details of court case law and the labour inspectorate has no powers regarding wage irregularities: these aspects all seem to be like proof that the inequalities are not coming to light, probably on account of a kind of implicit or explicit dissuasion in respect of the women who are the victims. The European Committee of Social Rights has already raised this issue, asking for information on “the number of cases alleging gender discrimination including pay discrimination taken before the courts” (Doc. 47).

While the salary check websites set up are useful, they do not enable female workers in a company to find out what their male colleagues actually earn (respondent state’s submissions, § 35).

This is confirmed in the CEDAW report submitted: “Labour inspectors seldom find violations related to the prohibition of sex- and gender-based discrimination. Nevertheless, it may not be claimed that these violations are seldom. They are difficult to prove within an inspection procedure, and a worker subjected to such violations usually does not want to reveal his or her identity” (Doc. 43, p. 36).

Another factor which may have a negative impact on women workers is 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 agreements with discriminatory effects do not appear to be banned, 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.

In all major trade union confederations in the Netherlands, a man usually occupies the presidential position. For instance, since its foundation, the Christian Labour Union has had only one female president, for a year in 2005, as against 15 men with longer terms (<https://www.cnv.nl/over-cnv/organisatie/overzicht-cnv-voorzitters/>), and there have been very few women presidents in the other organisations. And the Employers’ Confederation has never been headed by a woman (<https://nl.wikipedia.org/wiki/VNO-NCW#Bestuur> ; [https://www.vno-ncw.nl/sites/default/files/samenstelling\\_ab.pdf](https://www.vno-ncw.nl/sites/default/files/samenstelling_ab.pdf); <https://www.vno-ncw.nl/>).

The European Committee of Social Rights likes to have information on the number and content of the checks conducted by labour inspectorates, on economic and social data. The respondent state has not stepped up efforts by labour inspectorates to detect discrimination in companies, as already noted. Where are the relevant statistics by gender? How many reports were drawn up? What is the level of funding? How many cases were referred to the courts at the instigation of labour inspectors?

The ETUC states the following:

“Moreover, from a procedural perspective, it appears evident that there is also a violation as the result of eliminating the gender pay gap is not achieved. In particular, it is obvious that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient:

- in principle, the **labour inspectorate** should (be able to) ensure the satisfactory application of this important principle; despite the fact that the respondent State has ratified ILO Convention No. 81 on labour inspection it is obvious that this is not the case (in particular taking into account the nearly total lack of supervision in the SMEs);
- all **other means** to ensure the satisfactory application of the principle of equal value have proven insufficient.

From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective” (ETUC, § 107 to 108).

UWE agrees with the ETUC.

- **Lack of evaluation:** As already mentioned, there is a lack of evaluation of the action taken, and the respondent state’s submissions provide no clarification here. How many

appeals have there been concerning wage discrimination? How many of these have been dismissed for lack of evidence? How many cases have been referred and on what criteria? How many investigations have been conducted in companies? How many times have the labour inspectors or other relevant institutions taken action concerning specific issues?

The Committee regularly asks for updated information on the concrete measures and activities implemented to promote gender equality, particularly with regard to equal pay for work of equal value, and to reduce the gender pay gap, along with information on the results achieved in both the public and private sectors, but hardly any such information is to be found in the opposing submissions.

- **The measures implemented do not concern small enterprises:** The ETUC's observations point out that the official statistics exclude small enterprises, making it possible arbitrarily to indicate better wage equality figures:

“From a substantive perspective, there are at least the following elements which should (at least in combination) lead to a violation of Article 20 ESC:

- Statistical evidence (see above para. 97) shows that there is still a gender pay gap. Even if it might have been reduced during the last time **any** Gender pay **gap** does not fulfil the non-discrimination requirement based on sex.
- The official statistics are still excluding **small (micro) sized enterprises**. It is therefore most probable that the Gender pay gap is even higher in these enterprises.

From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective” (ETUC, § 105 & 106).

UWE agrees with the ETUC.

### 3.2. Statistical data

The respondent state's submissions include only very few relevant and reliable figures. UWE has referred to women who may wish to make complaints finding it hard or impossible to obtain comparative data concerning the wages paid. Several respondent states pretend not to understand the nature of the complaint and present irrelevant arguments concerning the risks of breaches of the principle of the confidentiality of personal data or powers which labour inspectorates allegedly have to obtain the necessary information. However, what these powers actually involve remains obscure and no figures are provided on cases where they are used (respondent state's submissions, § 8 et seq.).

The principle of confidentiality which the country apparently wishes to employ at least in part, but to an extent that is hard to assess, has never prevented the prohibition of discrimination between workers, the punishment of such discrimination by various procedures, the nullity of contracts which breach the prohibition or appropriate compensation.

It is no more acceptable, whether with regard to the gender pay gap or balanced participation of women and men in decision-making in private companies or indeed public bodies, for a country to 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.

The issue which all the complaints lodged by UWE seek to raise very deliberately is the persistence of a very low actual level of practical results, in spite of the protestations of good will, in most of the countries where the complaints are calling for the situation to be reviewed.

The same difficulties occur in all countries. “There is a difficulty in all countries in terms of objective measurement of income inequality. All tools are constructs based on standards set by statisticians. Is that to say that you can make figures say what you like? Certainly not, but if a social phenomenon is to be fully understood, it is necessary properly to grasp the tools used to measure it, including their upsides and downsides. Yet there is usually a great poverty of public debate on this subject. Of course, the tools have a political dimension, which is sometimes not properly mastered, but that is another story”, conclusions of an article in French (Observatoire des Inégalités, 29 August 2016, “Comment mesurer les inégalités de revenus”; <https://www.inegalites.fr/Comment-mesurer-les-inegalites-de-revenus>).

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. The respondent state makes choices so that one or other criterion is included in its statistics and others are excluded in an attempt to conceal greater wage inequality than it admits to. However, the respondent state does acknowledge that there is inequality; that has to be noted.

### **3.3. Structural effects and stereotypes**

Whatever the case, the existence of structural effects and the impact of stereotypes that are hard to change but are widespread cannot be ignored. The Shadow Report by Netherlands NGOs drawn up in June 2016 states that: “Stereotypes on gender, ethnicity, age, sexual orientation and disability are still persisting throughout society, and impede gender equality. Whereas women are often portrayed as either sexy or as mothers and loving wives, men are pictured as tough and rarely as fathers” ([http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT\\_CEDAW\\_NGO\\_NLD\\_22778\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT_CEDAW_NGO_NLD_22778_E.pdf), p. 7).

These stereotypes were recognised by the Netherlands government in the report to the CEDAW Committee in 2015 (<http://undocs.org/en/CEDAW/C/NLD/6>, § 15 et seq.).

In addition to the stereotypes, the complexity of the reasons for the persistent pay gap or differences in career development between men and women cannot serve as excuses for lack of progress towards meeting the requirements of the Charter.

From this point of view, the concentration of female and male workers in different sectors, with particularly large numbers of women in the education and health and social sectors, is not acceptable as an argument for justifying the pay gaps noted when the Charter refers to equal pay for equal work or work of equal value. There is little sign of the gaps narrowing in the Netherlands (<http://undocs.org/en/CEDAW/C/NLD/6>, § 62 et seq.).

It is clear that a key issue when it comes to meeting this obligation is that of classifications. Several, but not all, countries refer specifically to the issue, although in unfortunately obscure



terms. What are the criteria for the classifications and for which occupations are non-neutral classifications accepted? We are left in the dark.

- **Classification systems:** With regard to classifications, the submissions by the Netherlands state that they are a matter for social dialogue. The country refers to encouragement to negotiate classifications, but not a requirement to establish them. The Netherlands says nothing about the component elements or characteristics of this instrument, or about the pay gap calculation method for firms, thereby making it impossible to assess the latter's relevance in terms of exonerating itself for SMEs escaping the legislation that applies to larger companies. There would therefore appear to be a violation of the Charter in their case.

Gender bias is omnipresent. For instance, the workers of a municipal parks department, who are all male, are paid a bonus, but not the employees of a municipal welfare centre's kindergartens and nurseries, who are all female; the same could apply in a big private company. An employer of good will who was aware of classifications and their harmful effects would have been able to ensure balance in the physical or mental strain experienced by his or her employees. Nobody would have had a bonus or everybody would have had one.

There would appear to be a lack of occupational categories with clearly defined classification criteria, and the pitfalls here have not yet been properly addressed. This issue should not just be dealt with through collective bargaining but clearly also by states.

Two other key issues regarding equal pay are the overall pay gap and the context in which the gap is assessed.

- **The pay gap:** The respondent state advances an argument which is in part intrinsically contradictory and in part incompatible with the arguments put forward by the other countries.

The submissions by the Netherlands emphasise the difference between the "pay gap" and wage discrimination, it being left to the parties themselves to look after their interests on the basis of freedom of contract, so as not to have the state perform a policing function.

There are two possible interpretations of this approach: either the authors of the submissions wish to suggest that the authors of the complaint are not aware of the real meaning of the term "pay gap", or they are seeking to shift discussion of the issue of disparities in pay for periods of time worked to the much broader topic of the other factors in the pay gap (respondent state's submissions, § 12 et seq.).

Some of the statistics available, in particular the Eurostat indicator, group together – under conditions which must be clear, failing which confusion is generated – three separate phenomena: pay gaps proper; the number of hours worked during a period of employment and hence part-time work; and the consequences of stopping work for various reasons, including bringing up children, with the periods out of employment varying depending on the duration of and level of compensation for parental, maternity and paternity leave.

In February 2017, the Eurostat figures for the EU-28 for contributions to the gender overall earnings gap were as follows (Eurostat, Gender Statistics, Statistics explained [http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_statistics\\_Table2.PNG](http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_statistics_Table2.PNG)):

- The gender pay gap: 37.4%
- The gender hours gap: 30.5%
- The gender employment rate gap: 32.1%

In February 2017, in the case of the Netherlands:

- The gender pay gap: 27.2%
- The gender hours gap: 51.6%
- The gender employment rate gap: 21.3%

	Gender pay gap	Gender hours' gap	Gender employment rate gap
<b>EU-28</b>	37.4	30.5	32.1
<b>Belgium</b>	18.1	47.6	34.3
<b>Bulgaria</b>	59.6	4.3	36.1
<b>Czech Republic</b>	49.4	4.6	46.0
<b>Denmark</b>	57.3	15.5	27.2
<b>Germany</b>	41.9	38.7	19.4
<b>Estonia</b>	68.2	12.0	19.8
<b>Ireland</b>	32.6	31.4	36.0
<b>Greece</b>	.	.	.
<b>Spain</b>	36.5	25.1	38.5
<b>France</b>	45.3	25.6	29.1
<b>Croatia</b>	.	.	.
<b>Italy</b>	11.0	32.7	56.3
<b>Cyprus</b>	48.6	13.5	37.9
<b>Latvia</b>	73.7	2.4	23.9
<b>Lithuania</b>	65.9	22.6	11.4
<b>Luxembourg</b>	14.1	39.5	46.4
<b>Hungary</b>	42.2	7.7	50.1
<b>Malta</b>	18.4	13.6	67.9
<b>Netherlands</b>	27.2	51.6	21.3
<b>Austria</b>	42.2	38.2	19.6
<b>Poland</b>	21.1	23.0	55.9
<b>Portugal</b>	53.2	14.1	32.7
<b>Romania</b>	15.0	3.5	81.5
<b>Slovenia</b>	33.2	13.0	53.9
<b>Slovakia</b>	46.8	6.3	46.9
<b>Finland</b>	73.7	18.4	7.9
<b>Sweden</b>	49.2	35.8	15.0
<b>United Kingdom</b>	39.2	38.2	22.6
<b>Iceland</b>	43.6	42.2	14.2
<b>Norway</b>	41.2	46.1	12.7
<b>Switzerland</b>	32.5	47.6	19.9
<b>FYR of Macedonia</b>	18.5	1.1	80.4
<b>Turkey</b>	-1.5	2.3	99.2

(\*) The gaps of the components (gender pay gap - GPG, gender hours' gap - GHG and gender employment rate gap - GERG) do not add up to the gender overall earnings gap (GOEG). However, the following relationship holds:  $(1 - GPG/100) \times (1 - GHG/100) \times (1 - GERG/100) = (1 - GOEG/100)$  which can be transformed by the logarithm into the following additive relationship:  $\ln(1 - GPG/100) + \ln(1 - GHG/100) + \ln(1 - GERG/100) = \ln(1 - GOEG/100)$ . This allows calculating contributions as follows (e.g. for GPG):  $\ln(1 - GPG/100) / \ln(1 - GOEG/100) \times 100$ .

Other reports reach similar conclusions: European Network of Legal Experts in Gender Equality and Non-Discrimination on “The enforcement of the principle of equal pay for equal work or work of equal value” ([ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48052](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48052)) and the 2017 annual report on gender equality in the EU-28 ([ec.europa.eu/newsroom/document.cfm?doc\\_id=43416](http://ec.europa.eu/newsroom/document.cfm?doc_id=43416)).

The ETUC’s observations state the following: “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 the Eurostat figures for 2015, this remained at 16.1%. (See also table in Part I.B.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%)” (ETUC, § 97).

To assess the reality of the pay gap, which is less favourable than the respondent state maintains, it must therefore be corrected or refined with other indicators and data. The indicator which the government relies on 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.

A (female) former minister believes that the pay gap is too wide (<https://nos.nl/artikel/2201051-gelijk-loon-voor-man-en-vrouw-hoort-bij-het-nederland-van-nu.html>)

- **The impact of parental leave:** The Netherlands government also does not analyse the impact on the pay gap of its choices in terms of the duration of and levels of compensation for parental leave. It does recognise this as an issue to be looked into. However, studies show that extending paternal leave is a key alternative to the traditional methods of combating wage discrimination (OECD, Policy Brief, March 2016; <https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf>). “Difficulties in obtaining paid paternity and parental leave: Paid paternity and parental leave can contribute to eliminate stereotypical images and attitudes regarding the role of women and men in the family and facilitate conciliation of family and work life. NGOs note that, in comparison with other countries in the EU, there are limited entitlements to paid paternity leave for partners of new mothers in the Netherlands. Moreover, according to a recent study one-fifth of all new fathers even cannot or will not claim these limited entitlements. In its 6th Report the government does not mention the abolishment of the special tax discount in case of parental leave, which was created as a basis for paid parental leave (CEDAW/C/NLD/6, para 50 and 51). This is a step backwards and not in line with recommendation 37 of the Concluding Observations (CEDAW/C/NLD/CO/5, para. 37)”

([http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT\\_CEDAW\\_NGO\\_NLD\\_22778\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT_CEDAW_NGO_NLD_22778_E.pdf), p. 12).

Recent studies, including by the OECD, show that there is a link between the length of paid maternity leave and parental leave and the size of the pay gap (<https://www.nytimes.com/2017/05/13/upshot/the-gender-pay-gap-is-largely-because-of-motherhood.html>).

A look at the following is sufficient here:

- A chart showing the link between the length of paid parental leave and the pay gap (<https://utopiayouarestandinginit.com/2014/11/09/the-link-between-paid-parental-leave-generosity-and-a-larger-gender-pay-gap/>)
- An article by O Thévenon and A Solaz, “Labour Market Effects of Parental Leave Policies in OECD Countries”, published in OECD Social, Employment and Migration Working Papers No. 181, 2013; <http://www.oecd-ilibrary.org/docserver/download/5k8xb6hw1wjfen.pdf?expires=1512122805&id=id&accname=guest&checksum=0607E498F60AD5CC8648E59B0C051980> ; <http://paa2012.princeton.edu/papers/121481>

- 2016 RAND study on the impact of paid parental leave, including paternal leave, on wage equality ([https://www.rand.org/pubs/research\\_reports/RR1666.html](https://www.rand.org/pubs/research_reports/RR1666.html))
- The 2016 OECD statistics on the total length of paid maternity leave and parental leave (in weeks), which confirms this analysis (<http://stats.oecd.org/index.aspx?queryid=54760&lang=en>).

- **Measurement of the pay gap** is also based solely on monthly wages and does not take account of fringe benefits. However, the pay gap in fringe benefits is wider than in the case of wages themselves. It is also unclear whether a distinction is made between the public and private sectors. Once again the data are not reliable. Lastly, women are over-represented in the lowest full-time gross monthly wage categories, while the proportion of men is higher in the highest categories.

The respondent state discovered these points in 2016 in a study concerning the gender pay gap in higher professional education institutions (*hogescholen*), where 30 remuneration criteria that can lead to discrimination were uncovered. “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 (...) By bringing to light social factors that contribute to wage inequality, these studies raise awareness, which in turn will contribute to the reduction and eventually the elimination of pay disparities. The CRM publishes recommendations for employers along with its findings” (respondent state’s submissions, § 23 to 25). Unfortunately, real, practical inequality still exists in the Netherlands. The report by the Dutch Network of Women Professors is interesting in this connection; it also points out the lower pay of female academics (<https://www.lnvh.nl/site/Publications/LNVH-Reports/LNVH-Rapport-Financile-Beloning-MV-in-de-Wetenschap>); [https://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2017/Eerste\\_treden\\_op\\_de\\_arbeidsmarkt](https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2017/Eerste_treden_op_de_arbeidsmarkt)).

- **The assessment base** must not just be an individual company but must be extended to entities forming a working environment or a technical unit for a group of workers employed by several companies, including subcontractors. The respondent state seems not to take account of the concept of technical unit, as a result of which the scope of the regulations is very limited. Nothing is said about checks on the implementation of company reports. Likewise, the size of companies is a key assessment base and the whole range of issues is still to be addressed in many companies not covered by the legal provisions on equal pay.

It is worthwhile referring to the Committee’s conclusions setting out the principles which apply to all the respondent states (Conclusions 2016, Portugal):

“The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require that it be possible to make pay comparisons across companies (Conclusions 2010, France). At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Statement of Interpretation on Article 20, Conclusions 2012)”.

Other key variables were not taken into account in the respondent state’s submissions, although they have been covered in the work done by the ILO for forty years. In assessing a particular job, it is necessary to employ assessment grids that take account of neutral classifications and to focus on:

- The problems relating to the choice of assessment criteria and their significance
- The problems relating to the omission of certain criteria
- The problems relating to certain aspects being overemphasised
- The problems relating to the interplay of the levels and weighting of the criteria
- The problems relating to the lack of transparency in the assessment process
- The problems relating to career advancement in different employment sectors

Examples of indirect discrimination bias have been identified in job assessment and classification methods, but nothing has been done to take account of them effectively in policies:

- The criteria employed to assess jobs
- The application of these criteria in the weighting and ranking of jobs.

For instance, the responsibility recognised in a particular job is often financial or relates to line management. However, other types of responsibility exist and are not taken into account, including responsibility in relation to persons who are not subordinates, to products or to data confidentiality. Other examples are problem resolution, which is neither visible nor of strategic importance, and daily issues to be resolved, with none of these being covered in classifications. While reference has already been made to physical or mental strain, there is also the issue of the multiskilling required in posts held by women not being taken on board positively, unlike the specialisation of their male colleagues’ posts.

It is clear what has to be done, so why is no corresponding action being taken? The grids included in the various plans on the initiative of the authorities are not binding.

In the more specific case of the Netherlands, the European Commission states the following (Doc. 20):

“Some of the factors that contribute to the gender pay gap are:

- Management and supervisory positions are overwhelmingly held by men. Within each sector men are more often promoted than women, and paid better as a consequence. This trend culminates at the very top, where amongst CEOs less than 4% are women.

- 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. Working men spend on average 9 hours per week on unpaid care and household activities, while working women spend 26 hours – that’s almost 4 hours every day. In the labour market this is reflected by the fact that more than 1 in 3 women reduce their paid hours to part-time, while only 1 in 10 men do the same.
- Women tend to spend periods off the labour market more often than men. These career interruptions not only influence hourly pay, but also impact future earnings and pensions.
- Segregation in education and in the labour market; this means that in some sectors and occupations, women tend to be over represented, while in others men are over represented. In some countries, occupations predominantly carried out by women, such as teaching or sales, offer lower wages than occupations predominantly carried out by men, even when the same level of experience and education is needed.
- Pay discrimination, while illegal, continues to contribute to the gender pay gap”.

Gender mainstreaming in all cross-cutting activities is, however, required under the European Social Fund programme for 2015-2020 and the Council of Europe Gender Equality Strategy for 2014-2017, in which the respondent state was involved. On the basis of the information supplied by states, a report was issued on 19 October 2017: “Activities and measures in member states towards the achievement of the objectives of the Council of Europe Gender Equality Strategy” (<https://rm.coe.int/gec-2017-10-implementation-ge-strategy/168075df26>).

This report sets out the Netherlands’ latest commitments for each objective and indicates the efforts to be made to eliminate inequality and discrimination (ibid., p. 113 et seq.).

- **Economic losses of several billion euros:** There is no justification in law for this inequality, and no economic justification either.

For some fifteen years now, studies have agreed that the various types of discrimination on the labour market are ruinous and cause huge economic losses. Reducing them would generate an increase in growth and income of roughly 3% to 4% of GDP. Putting men and women on a strictly equal footing would accordingly inject billions of euros into the economy and generate billions of euros in additional tax receipts for governments because of the collection of higher levels of employee and employer contributions and taxes. And women workers would also benefit directly in terms of their living standards.

Unfortunately, the pay gap at present is such that in 2017 female employees in Europe worked for free from 3 November to 31 December.

Female workers in the Netherlands worked for free from 3 November to 31 December 2017 (<http://www.slate.fr/story/127622/infographie-ecart-salaires-europe> ; <https://nltimes.nl/2017/10/24/wage-gap-dutch-women-work-2-months-per-year-unpaid>).

Since 1 January 2018, one Council of Europe member state, Iceland, has prohibited unequal pay for women and men and imposed harsh financial penalties for non-compliance. This is an example to be followed in that it both respects women’s rights and benefits everybody.

In any case, EU member states are covered by EU directives and hence the rule prohibiting indirect discrimination, breaches of which play a large part in wage gaps.

The European Committee of Social Rights will accordingly uphold the complaint and declare UWE's action well-founded.

#### **IV. THE UNDER-REPRESENTATION OF WOMEN IN DECISION-MAKING POSTS**

##### **4.1. Lack of results**

At issue here are access by women to positions of responsibility and the promotion of genuine equality in the occupation of those posts, as well as the elimination of pay gaps for the individuals concerned, as new female board members are less well paid than their male colleagues. Although most countries have provided much information here in terms of listing the institutions involved and the meetings held in this connection, it is not possible to determine the extent to which the relevant strategies are actually conclusive or achieve the desired objectives in reasonable proportions and within short timeframes.

The Netherlands Government “agrees with UWE that the small number of women in senior positions is an issue”; that has to be noted (respondent state's submissions, § 53).

Moreover, Edith Schippers, former Netherlands government minister, said in December 2017 that the country's Prime Minister had not looked properly for women for senior posts

(<https://www.metronieuws.nl/nieuws/binnenland/2017/12/schippers-rutte-zocht-niet-goed-naar-vrouwen>).

##### **4.2. Women on company boards of directors**

A 2016 analysis of parity on boards by Ofi Management (“La parité au sein des conseils, un enjeu de diversité”) shows that the Netherlands' figure of 23.8% is 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 (<http://www.morningstar.fr/fr/pro/api.aspx?Path=cache/documentdownloads/files/8379/revisions/1/>, p. 3).

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, only for the largest companies, i.e. a total of 5 000.

“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 the 18 months leading up to mid-2016 the number of women on the management and supervisory boards of the largest 200 companies increased by 2.1 and 3.2 percentage points respectively. For the group of 5 000 large companies the increase was 0.6 of a percentage point on management boards and 1.9 points on supervisory boards” (respondent state’s submissions, § 63 & 64). In the case of smaller companies, there are no specific provisions and the percentage of women is much lower.

It would seem that women are less likely to become company managers in the Netherlands than in other European countries (<https://www.mt.nl/management/onderzoek-nederlandse-vrouw-maakt-minste-kans-op-managementpositie/89470>).

The ETUC states the following: **“Concerning the (under-)representation in decision making positions within private companies**

From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to representation of women in decision-making positions in private and public enterprises/administrations - and without being exhaustive - are the following:

- An amendment of 2013 of the Book 2 of the Civil Code sets out a minimum target for listed companies, and large non-listed companies, of 30 per cent representation of women on the management and supervisory boards of large companies. However, this quota is “comply-or-explain” and no sanctions are foreseen, and it has a temporary effect, only valid until 2016.
- Diversity clauses are also foreseen in the Dutch Corporate Governance Code of 2008, revised in 2016, applicable to listed companies and both executives and non-executives. Boards will need to provide and publicly disclose a policy on board composition, and fix targets on gender diversity among others.

In April 2016, the average share of women on the boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3%. For the Netherlands, the figure is only 28.1%.

Another source, namely the Dutch Female Board Index© 2017, presents, for the 10th time, an overview of the presence of women in the executive board and supervisory board (together: ‘the Board’) of (85) Dutch listed companies per August 31st 2017. Most remarkable results for 2017 (compared to 2016) in particular are: the rate of women on boards has again decreased from 7.1% to 6.2%; 6 companies reached the target of 30% women on boards, 56% of the new female board members are non-Dutch nationals” (ETUC, § 98 to 100).

“Concerning the (under-)representation in decision-making positions within private companies this problem has only been addressed in more recent years. As developed in Part I.B.2., this is covered by Article 20 of the Charter. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 20 of the Charter.



***a) Substance***

Statistical evidence (see above paras. 99 and 100) 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 not to be disputed that women are not sufficiently represented within these bodies.

From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

***b) Procedure***

It would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decision-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective” (ETUC, § 109 to 113).

We are bound to agree with the ETUC’s observations.

**4.3. The legislation does not apply to management boards**

“A double glass ceiling and a perimeter wall” and “a sticky floor” are the graphic terms used to describe the difficulties women in the country encounter in entering positions of responsibility in companies outside boards of directors.

The respondent state does not address this issue, as indicated in its submissions. It confines itself to boards of directors. The lack of women in decision-making posts is proven, and it also prevents a pool of talent from developing. The CEDAW Shadow Report is clear in this respect: “According to the Female Board Index 2015, in which 84 leading Dutch companies participated, only 7.8% of the executive directors are women and 21.3% of the non-executive (supervising) directors”

([http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT\\_CEDAW\\_NGO\\_NLD\\_22778\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NLD/INT_CEDAW_NGO_NLD_22778_E.pdf), p. 11).

This discrimination is established and is contrary to the Netherlands’ various undertakings in this respect.

The Netherlands violates the Social Charter on this claim of the under-representation of women in decision-making posts in business.

The collective complaint must be upheld on both claims.

**V. THE COSTS INCURRED**

With regard to the claims for a state whose policy is found to be in breach of the Social Charter to meet the costs incurred in bringing the collective complaints, the objection by all the respondent states, including the Netherlands, is based on the idea that the European Committee of Social Rights is not a judicial authority and that there is no explicit provision in the Charter for the costs to be met. Although there is indeed no such provision, the payment of the winning party's legal costs, as is the rule in cases before domestic courts, would be consistent with the spirit of the Charter.

Otherwise, there will be a real indirect dissuasive effect on organisations which theoretically are entitled to lodge collective complaints – as demonstrated by the fact that so few have succeeded in doing so, regardless of how much they wanted to – to put an end to numerous well-known violations of the Charter which may or may not be noted during the supervision cycles.

In addition, the collective complaints before the European Committee of Social Rights are similar in many respects to the appeals against regulatory decisions on grounds of abuse of authority which are heard in some states by administrative courts or bodies with related powers and where the public authorities are not awarded costs if the applications by natural or legal persons are dismissed. The only exception involves fines for abuses of the right of application. The claim for costs is therefore maintained.

## VI. STATEMENT BY THE COMMISSIONER FOR HUMAN RIGHTS

It should be noted that the texts of the various pillars of the Council of Europe enshrine effective gender equality, member states have adapted their legislation and the actions, strategies, recommendations and resolutions of the Council of Europe pursue this goal.

The respondent state's replies concerning the two complaints are not sufficiently precise. However, as it has signed up to the Charter, it falls to the respondent state to indicate what measures are taken in the country and the reasons for the persistent inequalities, the under-representation of women in decision-making posts, the random statistics, the plans which do not produce results and the lack of reports and assessments.

There is a lack of political will and practical action on the part of the respondent states of the kind women have been waiting for for so many years.

It is worth referring here to **the statement by Nils Muiznieck, Council of Europe Commissioner for Human Rights, dated 20 December 2017 and entitled "Gender equality in employment is still a distant promise in Europe"**, which reads as follows:

"This year once again 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”.

“The role of state authorities, in particular governments and parliaments, is crucial. They must lead by example and fully implement the gender equality standards set out in international and European human rights treaties. Among them, **the European Social Charter requires that state parties guarantee the principle of equal pay for work of equal value by legislation that should be implemented effectively.** This includes providing for appropriate sanctions and remedies in case of gender discrimination in the workplace. Both within the public administration and in the labour market, state authorities must make more efforts to bridge the gender pay gap. They should also remove barriers that prevent women from reaching top level posts”.

**“The current situation is not only harmful for women and the economy. It is deleterious for society as a whole.** Even where the gender pay gap is narrowing, this is happening very slowly. If states do not step up their efforts now, it will take several more decades before full equality is achieved. We cannot afford to wait such a long time. **European states must show more resolve in upholding the obligation to ensure gender equality in the employment sphere”.**

(<https://www.coe.int/en/web/commissioner/-/gender-equality-in-employment-is-still-a-distant-promise-in-europe>).

### 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 declare the action by University Women of Europe, UWE / Groupe Européen des Femmes diplômées des Universités, GEFDU, well-founded;
- consequently, to hold that the Netherlands’ failure to ensure in practice equal pay for women and men for equal, similar or comparable work and the under-representation of women in decision-making posts in the Netherlands breach the provisions of the revised European Social Charter, particularly Articles 1, 4, 4§3, 20 and E;
- to draw any factual and legal conclusions therefrom;
- consequently, to order the Netherlands to pay University Women of Europe, UWE / Groupe Européen des Femmes Diplômées des Universités, GEFDU, and its counsel the

sum of €10 000 excluding tax by way of an initial estimate to cover the time spent and the costs incurred in connection with these proceedings.

Without prejudice  
9 February 2018

*Anne Meyer*

