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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

28 May 2018

Case Document No. 9

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

**FURTHER RESPONSE FROM THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 19 April 2018



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

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Date 19 April 2018
Re University Women of Europe (UWE) v. the Netherlands
Complaint No. 134/2016

Dear Mr Kristensen,

Further to your letters of 22 February 2018 and 4 April 2018 concerning the abovementioned complaint, I have the honour to inform you as follows.

The Government maintains its position as set out in its observations on the merits of 3 November 2017, to which the Government wishes to refer. In addition, the Government wishes to make a number of observations with regard to the response of UWE.

According to UWE, as stated under section 2.2 of their response, it is the Government's position that the Charter "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." The Government considers this to be a misrepresentation of its position. The Government wishes to emphasize that it considers passing the required legislation and setting up appropriate institutions as only one aspect of its obligations under the Charter. According to the Committee's decisions, governments have to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified in the Charter. In line therewith the Government has taken a number of actions to eradicate pay inequality between men and women. These relate to addressing the social causes of pay inequality and raising awareness on the issue. In addition, the Government pursues an active policy of addressing the underrepresentation of women in senior positions in the private sector, as is explained in its observations on the merits.

Under section 2.2 of their response, UWE enumerates a number of subjects on which the applicant considers that the Government has failed to provide sufficient information. The Government wishes to point out that the information referred to by the applicant for the greater part does not directly concern the subject matter of the complaint. As can be inferred from the Committee's decision on the admissibility, the present complaint is aimed at the issue of

equal pay and equal representation in senior positions. The Government's observations on the merits therefore focus on this particular issue, not on the general position of women and girls in Dutch society. That being said, the Government would emphasize that most of the information referred to is publicly available. In this respect the Government refers to the Annexe to this letter, which contains a list of websites where the most relevant information can be found.

Date
19 April 2018

The Government cannot place the suggestion under section 2.3 of UWE's response that the Government has used the economic and financial crisis as a pretext for not implementing its obligations under the Charter or pursuing the objectives laid down therein. The Government does not see how this can be inferred from its observations on the merits. During the economic and financial crisis the Government continued its policy aimed at promoting gender equality and better representation of women in the workforce. These efforts helped maintaining and even improving women's overall position in employment during the crisis. A 2016 study by the Netherlands Institute for Social Research (SCP) found that the participation of women in the workforce had improved in the period between 2005 and 2015.¹

The Government rejects the submission under section 3.1 of UWE's response that the Netherlands Institute for Human Rights (NIHR) applies the reversal of the burden of proof in discrimination cases differently from courts of law. The Government would emphasize that in both procedures before the NIHR and courts of law, a prima facie case of discrimination suffices for the burden of proof to be reversed, as is submitted in the observations.

Under section 3.3 of their response, UWE submits that the Government should require the establishment of salary classifications by social partners in collective agreements instead of merely encouraging them. The Government wishes to emphasize the importance to respect the freedom of workers and employers to association and their right to bargain collectively, also laid down in articles 5 and 6 of the Charter. These provisions prohibit government interference in collective bargaining processes, including with regard to the establishment of salary classifications.

More generally, the Government wishes to re-emphasize the difference between the concepts of the gender pay gap and pay discrimination and refers to paragraphs 8 and 9 of the Government's observations on the merits in this respect. The current complaint focuses on pay discrimination, in relation to article 4§3 of the Charter, as was reaffirmed in the Committee's decision on the admissibility. For the purposes of this complaint, therefore, arguments should be limited to the question whether the Government has failed to protect women against pay discrimination, in violation of its obligations under the Charter. As the Government explained in its observations on the merits, this is not the case.

¹ https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2016/Emancipatiemonitor_2016

That being said, the Government contests UWE's suggestion under section 3.3 of their response that the gender pay gap is not adequately measured. The Government insists that the data provided biannually by Statistics Netherlands is highly reliable. The gender pay gap is a serious area of concern, which the Government addresses through various means, and reliable data is a precondition for effective policy. For this reason, the Government has asked the NIHR to conduct studies into the underlying root causes and mechanisms of wage discrimination in different sectors. These studies, funded by the Government, have taken place in colleges (*hogescholen*), as mentioned by UWE, and in the insurance sector. The NIHR mentions these studies, as well as a previous study in general hospitals, in para 3.3 of its written contribution on unequal pay in the Netherlands of March 2018.

Date
19 April 2018

The Government finally wishes to point out that UWE under section 4.3 of their response inaccurately states that the Netherlands has only taken measures with regard to equal representation at the level of board of directors. The Government would emphasize that the efforts aimed at equal representation in senior positions are directed at all layers of management, including mid-management level and management boards, as can be inferred from the Government's observations on the merits, more specifically in paragraphs 56 to 86.

Yours sincerely,



Babette Koopman
Agent of the Government of the Netherlands