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

Confidential¹

University Women of Europe (UWE) v. Finland

Complaint No. 129/2016

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 5 December 2019

¹ It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 29 June 2020.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints (“the Protocol”), the European Committee of Social Rights, a committee of independent experts of the European Social Charter (“the Committee”) transmits to the Committee of Ministers its report² on Complaint No. 129/2016. The report contains the Committee’s decision on the merits of the complaint (adopted on 5 December 2019); the decision on admissibility (adopted on 4 July 2017) is appended.
2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.
3. The Committee’s procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and last revised on 10 September 2019 at its 308th session.
4. The report has been transmitted to the Committee of Minister on 28 February 2020. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 29 June 2020.

² This report may be subject to editorial revision.



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

DECISION ON THE MERITS

Adoption: 5 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Finland

Complaint No. 129/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 310th session in the following composition:

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

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 12 September 2018, 19 March 2019, 12 September 2019 ,16 and 17 October 2019, 2, 3 and 5 December 2019,

On the basis of the report presented by Giuseppe PALMISANO,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint lodged by University Women of Europe (UWE) was registered on 24 August 2016.
2. UWE alleges that the situation in Finland is in violation of Articles 1, 4§3, 20 and E of the Revised European Social Charter ("the Charter") having regard to the pay gap between men and women and the under-representation of women in decision-making positions within private companies in Finland.
3. On 4 July 2017, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints ("the Protocol") the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 13 October 2017.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they wished to make on the merits of the complaint by 13 October 2017.
6. In application of Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 13 October 2017.
7. The Government's submissions on the merits were registered on 12 October 2017.
8. On 14 September 2017, the European Confederation of Trade Unions (ETUC) asked for an extension for the deadline for presenting its observations on the complaint. The President of the Committee extended this deadline until 3 November 2017. ETUC's observations were registered on 3 November 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 21 December 2017. On 17 October 2017, UWE asked for an extension of the deadline for presenting its response. The President of the Committee extended this deadline until 12 January 2018. UWE's response was registered on 11 January 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 15 March 2018. On 23 February 2018, the Government asked for an extension of the deadline for presenting its further response. The President of the Committee extended this deadline until 16 April 2018. The Government's further response was registered on 16 April 2018.

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

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

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. UWE asks the Committee to hold that the situation in Finland breaches Articles 1, 4§3, 20 and E of the Charter on the following grounds:

- Firstly, UWE alleges that a gender pay gap between women and men still persists and is unfavourable to women. UWE maintains that Finland has not achieved equal pay for equal, similar or comparable work; and
- Secondly, women are still under-represented in decision-making positions within companies.

14. Finally, UWE requests the payment of €10,000 for costs incurred during the proceedings.

B – The respondent Government

15. The Government asks the Committee to reject UWE's allegations as they are unfounded and UWE has failed to demonstrate the way in which Finland has violated the Charter. Accordingly, the Committee should hold that Finland has not violated Articles 1, 4§3 or 20, as well as Article E of the Charter in conjunction with Articles 1, 4§3 and 20 in the present case.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics, concludes that the minimum pay gap between men and women lies above 5.5% in all the countries concerned. The ETUC therefore observes that, as the statistics highlight, the principle of equal pay for work of equal value is not guaranteed in practice. It also indicates that this is even more true when the lack of clarity in relation to the calculation is taken into account (for example, to what extent do they reflect other discriminatory elements, such as career differences which can lead to an increase in the pay gap or issues related to the source of data (for instance, undocumented work or the informal economy, both of which are sectors in which the gender pay gap is probably even higher).

17. The ETUC further refers to data of the European Institute for Gender Equality (EIGE), with regard to the representation of women in decision-making positions in private companies, and concludes that only two countries achieved the European Commission's proposed 40% objective for the representation of women on Boards, namely France and Norway. The ETUC points out in its conclusion, however, that the data in question only refers to the 'largest listed companies', and not to other listed companies and non-listed companies which represent, quantitatively, a much higher share. The ETUC therefore assumes that none of the countries concerned reach the threshold of 40%.

18. The ETUC indicates that the two main elements raised in the complaint differ from a legal point of view. Equal pay is a classic fundamental principle, and despite States traditionally providing for it in legislation, they do not sufficiently enforce it. The second ground, which concerns the under-representation of women on decision-making boards in private companies, is a fairly new element appearing at international and national level as a problem to be seriously dealt with. Nevertheless, both elements are covered by Article 20 of the Charter which guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex".

19. With respect to the pay gap between men and women, the ETUC raises the point that, in order to assess the conformity or non-conformity of the situation in each country with regard to the Charter, it is necessary to examine both substantive and procedural dimensions.

20. At the substantive level, there is a quantitative and a qualitative dimension to be considered. According to the ETUC, only a 'zero' pay gap should be permitted. However, on the basis that the interpretation of 'equal' does not apply in the strict sense of the word, a reasonable threshold could be a maximum of 5%. With respect to the qualitative dimension, as the statistics show, the pay gap between men and women continues to exist. The ETUC considers that it is no longer sufficient that States are free to choose the means by which they ensure equal pay, and point to the need to go further by taking into account the evolution of international case law. Accordingly, it would appear important to require a clear and comprehensive legislation, which should at least ensure that:

- the coverage of all workers is guaranteed;

- the general legal concept also includes indirect discrimination
- the term 'pay' contains all elements of remuneration as well as supplementary pension
- the comparison comprises as a minimum:
 - transparency
 - the reach of comparison between jobs performed by women and men being construed as wide as possible
 - a wide definition of 'equal value', also encompassing work that is of an entirely different nature, which is nevertheless of equal value
 - the necessity to evaluate the respective jobs with criteria excluding any kind of discrimination, even indirect
 - the assessment concerned is followed by effective consequences in cases where the results show that there is discrimination.

21. With respect to the under-representation of women in decision-making positions in companies, as a consequence of the decision of admissibility of the Committee, it follows that this aspect falls within the scope of Article 20.

22. At the substantive level, the ETUC considers that it is necessary to provide for a minimum threshold for representation of both sexes in decision-making positions. Although perfect equality, that is to say 50% of representation of both sexes, would not be a requirement, the ETUC considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. The same procedural elements as those listed for equal pay between men and women are applicable.

24. According to the Commission, based on Eurostat 2014 figures, in Finland the gender pay gap stands at 18.4% (the average gender pay gap in the EU is 16.7%) and the gender overall earnings gap in Finland stands at 24.5% (the average gender overall earnings gap in the EU is 39.8%).

25. As regards the representation of women in decision-making positions within private companies, according to ETUC, as regards substance, statistical evidence shows that there is still an underrepresentation 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.

26. From a procedural point of view, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

27. For these reasons, the ETUC believes that the situation represents a violation of Article 20 of the Charter on both counts.

OTHER OBSERVATIONS

A – The European Union

28. In its observations regarding Complaints No 124-138/2016, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, the European Union, through the European Commission, highlights the European Union's legal framework and policy action of relevance to the matters raised in the complaints.

29. As regards the legal framework, the European Commission recalls that the principle of equal pay between women and men has been enshrined in the Treaties since 1957. The principle of equal pay for men and women for equal work and work of equal value was laid down in the original European Economic Community Treaty of 1957, more precisely in its Article 119, which later became Article 141 of the European Community Treaty. Since the entry into force of the Treaty of Lisbon (2009)³, the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

30. As regards non-legislative policy initiatives, according to the European Commission, closing the gender pay gap remains a major objective to achieve gender equality and it is a political priority. The gender pay gap in the EU still averages around 16%. This is socially unfair as well economically inefficient, equal pay being an obvious prerequisite for equal participation in the labour market. Across the EU, women have better educational outcomes than men (44% of women aged 30-34 in the EU attained tertiary education, compared with 34% of men). This factor does not prevent, however, women in the EU from being overrepresented in industries with low pay levels. Sectoral segregation continues to be one of the most important contributing factors to the gender pay gap in the EU.

31. In November 2017, the Commission adopted a Communication: EU Action Plan 2017-2019¹⁰, tackling the gender pay gap. The Action Plan presents ongoing and upcoming measures taken by the Commission to combat the gender pay gap in 2018-2019. It identifies eight areas for action:

- Improving the application of the equal pay principle
- Combating segregation in occupations and sectors
- Breaking the ceiling: initiatives to combat vertical segregation
- Tackling the care penalty
- Better valorising women's skills, efforts and responsibilities
- Fighting the fog: unveiling inequalities and stereotypes
- Alerting and informing about the gender pay gap
- Enhancing partnerships to tackle the gender pay gap

32. Moreover, several other Commissions' actions directly relate to some of the elements of the complaints, such as to combating segregation in occupation and sectors, by supporting transnational projects to tackle stereotypes and segregation in education, and patriarchal attitudes. Besides, the European Commission monitors the national legislation and policies of Member States regarding the gender pay gap and raises awareness about it. The Commission reports regularly about the evolution of the gender pay gap, earnings and pensions gap in Europe. The Commission aims at combating vertical segregation, by working towards the adoption of a proposal for a Directive in this field.

33. The Commission considers that one way of determining work of equal value is by using gender-neutral job evaluation and classification systems. However, Directive 2006/54/EC does not oblige Member States to put such systems in place and their availability at national level varies significantly. To attain its purpose, Directive 2006/54/EC requires that Member States ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

34. The European Commission concludes by indicating that the complexity of the issues in question and the numerous elements that, in the end, lead to the gender pay gap can be seen from many different angles, from the sociological to economic and legal. Therefore, according to the European Commission, it is necessary to take all of these into account.

B – European Network of Equality Bodies (EQUINET)

35. The Ombudsperson for Equality in Finland, an independent national equality body, provided EQUINET with its submissions on the situation in Finland.

36. The Ombudsperson for Equality prioritises the effective implementation of equal pay, as the gender pay gap is a persistent phenomenon in Finland, where women earn on average 17% less than men. Pay inequality is to a great extent a structural problem with a long history, as it relates to structural and institutional features of the labour market.

37. The Act on Equality between Women and Men prohibits discrimination based on gender, gender identity and gender expression, as well as pay discrimination. The Act on Equality, which applies to some 5,000 to 6,000 employers, and about 3,000 educational institutions, require employers to promote equality. With a staff of ten people, the Act on Equality is supervised by the Ombudsperson of Equality.

38. The Ombudsperson's supervision of employers' compliance with the Act on Equality includes the issue of equal pay. The Ombudsperson points out that the Act on Equality does not cover all pay differences in the labour market. The scope is limited

to workers of the same company and workers whose pay has a single source – a concept based on the idea that the party responsible for implementing equal pay is in a position to guarantee equal treatment. Only these cases are supervised by the Ombudsperson.

39. Few cases have been brought to the attention of the Ombudsperson. Between 2014 and 2017, there were between 10 and 20 enquiries per year. If a person suspects that he/she has been subject to pay discrimination, the Ombudsperson either investigates the case and after the investigation, issues a statement, or provides guidance on a general level. The Ombudsperson's statements are not legally binding but carry important authority. In the event that the statements are not followed, the Ombudsperson may take the case to the Non-Discrimination and Equality Tribunal. In work-related discrimination, the Tribunal may prohibit the employer from continuing or repeating the discrimination, imposing a conditional fine if necessary. The person who allegedly suffered the discrimination, however, does not receive any compensation. The Tribunal has not had any pay discrimination cases.

40. Since November 2016, the Ombudsperson is empowered to promote reconciliation in gender discrimination matters based on the consent of both parties. Under the new provision, the parties can settle their dispute (agree to financial compensation). The settlement is submitted to the Non-Discrimination and Equality Tribunal. If approved, the settlement is enforceable as a court decision. This provision has not yet been used, even if in the past the Ombudsperson had promoted consensus between parties in the matter of discrimination.

41. The Ombudsperson is also authorised to provide legal assistance to workers who take their case to court, but this has not been done in practice. In most cases, legal assistance is provided by trade unions.

42. Concerning the number of pay discrimination cases, most seem to be settled between the shop stewards or trade unions and employers. Some 25 cases have arrived to the district courts and two to the Finnish Labour Court.

43. The Equality Act obliges companies with at least 30 workers to publish every two years a gender equality plan, which must include a pay survey supervised by the Ombudsperson. Any clear pay difference must be analysed and if there is no justification for the difference, the company should take appropriate action to rectify the situation. Where a company fails to draw up a gender equality plan, it must develop one within a timeframe. Companies must also submit information on any work-related discrimination cases.

44. The Ombudsperson acknowledges that more is needed in terms of the pay surveys, as they rarely cover the entire personnel and comparisons are often too narrow. Moreover, more systematic and comprehensive supervision should take place, but there are not enough resources to do so. The Ombudsperson also states that if pay data is available in the public sector, it is not the case in the private sector; access to pay data should be extended to the private sector to identify pay discrimination. Finally, the wage policy as a whole should be reviewed to allocate more funds to wages of undervalued female-dominated occupations. Promoting pay gender equality is essential as the starting point for the wage policy.

RELEVANT DOMESTIC LAW

45. The parties refer to the following provisions of domestic law:

A – The Constitution

46. Article 6 of the Constitution prohibits gender discrimination, obliging public authorities to promote gender equality in working life, particularly pay determination. The provision requires public authorities, particularly legislators, to take measures and actively provide protection. This provision is further specified by the provisions on the duty to promote gender equality laid down in the Act on Equality between Women and Men. These provisions include the authorities' duty to promote gender equality (Article 4), employer's duty to promote gender equality (Article 6) as well as the provisions on the employer's gender equality plan and pay survey (Articles 6a and 6b).

47. The constitutional prohibition of discrimination may be directly invoked in courts, and laws must be interpreted in accordance with it.

B – The Act on Equality between Women and Men (609/1986), amended in 2011

48. The Act on Equality between Women and Men includes provisions on promoting gender equality, prohibition of gender-based discrimination, monitoring of the Act and means of legal protection. Section 7 specifies a *general prohibition of discrimination* and defines what the Act means by gender-based discrimination. The provision prohibits both direct and indirect discrimination based on gender. After the amendment that entered into force in 2015, treating someone differently because of gender identity or gender expression is also prohibited. Section 8 expressly prohibits direct and indirect discrimination in working life based on gender, including pay and other terms of employment. In addition, Section 6 requires all employers to promote gender equality in the terms of employment, especially with regard to pay.

49. In 2015, the Act was amended. According to the Act on Equality between Women and Men, if the workplace has at least 30 employees, the employer must prepare a gender equality plan dealing particularly with pay and other terms of employment (Section 6a) and conduct a pay survey (Section 6b). The pay survey is used to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value. The Act on Equality between Women and Men also includes provisions on conducting the pay survey and dealing with its results. If the pay survey reveals clear pay differences between women and men, the amended Act requires the employer to analyse the reasons and grounds for these differences. If there is no justification for the pay differences, the employer must take appropriate measures to rectify the situation.

50. The Act on Equality between Women and Men has also been amended several times before. In 2005, it was comprehensively amended with the purpose of implementing EU directives, boosting gender equality planning and improving its results as well as promoting equal pay. One of the provisions added at that time *prohibits countermeasures by the employer* (Section 8a). According to the Section, the action of an employer shall be deemed to constitute discrimination prohibited under the Act if a person is given notice or otherwise treated less favourably after they have appealed to a right or obligation laid down in the Act or taken part in investigating a matter concerning gender discrimination.

C – The Act on the Non-Discrimination Ombudsman (1326/2014), adopted in 2014

51. The Act entered into force on 1 January 2015. According to Section 5 of the Non-Discrimination Act, an authority is responsible for evaluating the realisation of equality in their activities and take necessary action to foster equality. The authority must have a plan which includes necessary measures to foster equality. The Non-Discrimination Ombudsman supervises compliance with equality planning tasks.

52. As regards areas covered by the Non-Discrimination Act, a victim of discrimination may turn to the Non-Discrimination Ombudsman for advice and assistance in having the discrimination examined. Persons who consider that they have been discriminated against may also ask the Ombudsman to lead conciliation proceedings.

D – The Non-Discrimination Act (1325/2014), adopted in 2014

53. The Act is the main instrument transposing the EU directives on equal treatment into national law and repealed the prior Non-Discrimination Act, in force between 2004 and 2014.

54. The Non-Discrimination Act sets an obligation to promote equality on public authorities, education providers, educational institutes and employers. They are required to publish a plan to promote equality. The obligation to draw up an equality plan concerns companies with at least 30 employees. In this way the national legislation goes beyond the minimum requirements laid down in the directives.

55. Public authorities, education providers and employers must, where necessary, make reasonable accommodations to ensure that employees with disabilities have equal access to services, work or education and training. Persons with disabilities must also have equal access to goods and services. The disability of a person must be taken into account in provision of services, for example, by arranging accessible passage for those who need it whenever possible. Employers were already obliged under the former legislation to make reasonable accommodations, but this is a new obligation for providers of goods and services, such as hotels, restaurants and retailers.

56. The Non-Discrimination Act carefully follows the language and concepts of the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive), including the definitions.

57. The definition of direct discrimination (if someone is treated less favourably than the way in which another person is treated, has been treated or would be treated in a comparable situation) and indirect discrimination (an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons) are directly derived from the directives.

58. Also, different employment treatment is only allowed within the exception provided for in the directives on genuine and occupational requirements. The treatment must be based on the nature of the particular occupational activities concerned or the context that they are carried out, providing that the treatment is proportionate.

E – The Criminal Code

59. Work discrimination has been criminalised under Chapter 47, Article 3 of the Criminal Code of Finland. According to the provision, an employer, or a representative thereof, who, when advertising for a vacancy or selecting an employee or during employment, without an important and justifiable reason puts an applicant for a job or an employee in an inferior position because of, among other things, sex or family status, shall be sentenced for work discrimination to a fine or to imprisonment of up to six months.

F – The Employment Contracts Act

60. The Employment Contracts Act includes a specific provision on the employer's obligation for equal treatment and prohibition of discrimination, complementing the bans on discrimination in the Act on Equality between Women and Men. According to Chapter 2, Section 2 of the Employment Contracts Act, an employer must treat all employees equally, unless the difference is justified in light of the employees' duties and position.

61. According to Chapter 13, Section 9, paragraph 1 of the Employment Contracts Act, employees' pay claims become statute-barred, five years after the due date, unless the period of limitation has been interrupted before that time. The same period of limitation also applies to other claims referred to in the Employment Contracts Act.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

62. The Committee of Ministers adopted several recommendations, such as Recommendation Rec(1985)2 on legal protection against sex discrimination, in which it exhorts member states to take or reinforce measures for the promotion of equality between women and men, including through legislation in the field of employment, social security and pensions, taxation, civil law, the acquisition and loss of nationality and political rights. In its Recommendation Rec(1996)51 on reconciling work and family life the Committee of Ministers further calls on member states to take action to enable women and men to better reconcile their working and family lives. In its Recommendation Rec(1998)14 on gender mainstreaming, the Committee sets out the conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.

63. More recently, in its Recommendation Rec(2017)9 on gender equality in the audiovisual sector the Committee of Ministers invites the Member States to collect, monitor and publish data on gender equality. In particular, it asks the member States to adopt monitoring methods and performance indicators, highlight causal relationships using qualitative analysis of the data.

2. Parliamentary Assembly of the Council of Europe (PACE)

64. In its Resolution 1715(2010), the PACE observed that discrimination against women in the labour market has a long history. Several factors are put forward to explain the pay gap between women and men: horizontal and vertical segregation in the labour market (commonly referred to as "glass walls" and "glass ceilings"), women's supposedly lower qualifications and lesser experience, and their atypical working hours and career structures due to childbirth and care responsibilities.

65. The PACE recommends that member states:

- ensure that the right to equal pay for work of equal value is enshrined in their domestic legislation, if this is not already the case; that employers are obliged to respect this right (and incur penalties if they do not) and that employees can have recourse to the judicial process to pursue their claims with regard to this right, without incurring risks to their employment;
- collect reliable and standardised statistics on women's and men's wages, not only on the basis of gross hourly earnings, but also over the lifecycle;
- promote fair job classification and remuneration systems, including in the private sector,
- aim to increase women's labour market participation rate and work against the pitfall of part-time work by encouraging all measures seeking to improve the care of children and the elderly outside the home, and a more equal sharing of care and household responsibilities between women and men;
- follow the Norwegian and Icelandic models, and a recent French initiative, which require that a minimum of 40% of members of certain companies' boards be female, as an enabling factor.

66. The PACE calls on the social partners, employers' associations and trade unions, to respect and defend the right to equal pay for work of equal value, *inter alia* by promoting and adopting fair and transparent job classification systems and wage scales.

67. In its Resolution 1921 (2013) Gender equality, reconciliation of private and working life and co-responsibility the PACE observed that although progress has been made along the path towards gender equality, a traditional division of roles between women and men remains widespread in Europe.

3. European Court of Human Rights (ECtHR)

68. Article 14 (prohibition of discrimination) of the European Convention on Human Rights of 4 November 1950 provides:

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

69. In *Konstantin Markin v. Russia* - Application No. 30078/06, Grand Chamber, judgment of 22 March 2012, the Court has pointed out that:

"127 [T]he advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention ... In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex."

4. Commissioner for Human Rights

70. In his end-of-the-year statement (December 2017) the Commissioner for Human Rights, Nils Muižnieks, noted that:

“Gender equality in employment is still a distant promise in Europe.” (...)

Women in Europe effectively worked without pay during the last two months in comparison to men. In addition, they continued to face underrepresentation in decision-making bodies and positions. This is a gross injustice and a human rights violation. European states must tackle it much more forcefully than has been the case so far.

Although the situation varies from country to country, it is clear that women suffer everywhere on our continent from unequal treatment and opportunities in the workplace. It would be wrong to believe that this situation is the result of employment dynamics only. In reality, discrimination against women, be it direct or indirect, in this sphere of life results from deep-rooted societal attitudes that keep women in a subordinate role. Tackling this problem therefore requires a comprehensive approach from Council of Europe member states, from laws to be changed to political, cultural and economic measures to be implemented.”

71. In his position on women’s rights (2011), the Commissioner underlined that there are widespread and serious violations of the rights of women across Europe. With respect to women’s equality in the employment sector, there is a strong need to take steps to ensure that women have equal opportunities in the labour market at all levels, including senior and managerial-level positions, and that the principle of “equal pay for equal work” becomes a reality.

72. Wages in the private sector are often governed by collective agreements between social partners, without much room for state intervention. However, governments should step in and define the frameworks within which negotiations are possible. In order to ensure gender neutral job evaluation and grading systems, they can, for instance, specify the rules for applying the principle of equal pay for equal work between different sectors of employment. Authorities could also make use of awareness raising measures in the private sector, such as providing information to employers, employees and the public about their rights and duties.

B – United Nations

1. UN Convention on the Elimination of all forms of Discrimination (CEDAW) and its Committee

Gender pay gap

73. In its General Recommendation No. 13/12 1989, the CEDAW defined in more detail the content of ‘Equal remuneration for work of equal value’ by recommending to the States Parties that:

“2. They should consider the study, development and adoption of **job evaluation systems** based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;

3. They should support, as far as practicable, the creation of **implementation machinery** and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.”

Women on decision-making boards in enterprises

74. The CEDAW has also criticised the (under-)representation of women in decision-making bodies in enterprises. Although it has not (yet) provided a ‘General Recommendation’ on this issue, it has assessed the issue in these ‘Concluding Observations’: Estonia (2016)²⁹; Slovakia (2015); Spain (2015); Denmark (2015)¹⁶.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Committee on Economic, Social and Cultural Rights

75. In its General Comment No. 23 concerning Article 7, ICESCR defined in more detail the content of para. (a)(i) as follows:

11. Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be equal even when their work is completely different but nonetheless of equal value when assessed by objective criteria. This requirement goes beyond only wages or pay to include other payments or benefits paid directly or indirectly to workers. [...]

12. The extent to which equality is being achieved requires an ongoing objective evaluation of whether the work is of equal value and whether the remuneration received is equal

13. Objective job evaluation is important to avoid indirect discrimination when determining rates of remuneration and comparing the relative value of different jobs

3. Principles relating to the Status of National Institutions (The Paris principles)

76. Adopted by the General Assembly resolution 48/134 of 20 December 1983, the Paris principles set out six main criteria that National Human Rights Institutions should meet: a) Mandate and competence: a broad mandate, based on universal human rights norms and standards; b) Autonomy from Government; c) Independence guaranteed by statute or Constitution; d) Pluralism; e) Adequate resources; and f) Adequate powers of investigation.

C – International Labour Organisation

77. In its General Survey 2012, the ILO Committee on the Application of Conventions and Recommendations (CEACR) described the requirements which derive from Convention No. 100 in relation to the gender pay gap as follows:

Pay differentials

“668. Pay differentials remain one of the most persistent forms of inequality between women and men. Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains one of the most obvious examples of structural gender discrimination

669. The continued persistence of significant gender pay gaps requires that governments, along with employers’ and workers’ organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration. [...]“

Equal value

“673. The concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.

Comparing jobs, determining value

“695. The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non- discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions.”

D – European Union

1. Primary Law

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

79. The Treaty on European Union itself:

Article 2

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

80. The Treaty on the Functioning of the European Union (TFEU):

Article 830

“In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”

Article 157

“1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job. [...]”

81. The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States when they apply EU law, by virtue of Article 6(1)(3) of the Treaty on the European Union (TEU), provides:

Article 21 - Non-discrimination

“1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. [...]”

Article 23 - Equality between women and men

“Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.”

2. Secondary law

82. Directive 2006/54/EC (the Equal Pay directive) of 5 July 2006, Chapter 1 (‘Equal pay’) of Title II, Article 4 provides:

“Article 4 - Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”

83. Also, the Directive requires that the Member States shall ensure that all employment-related arrangements, including provisions in individual or collective agreements and contracts, internal company rules, rules governing independent professions and rules governing employees’ and employers’ organisations contradicting the principle of equal pay shall be or may be declared null and void or may be amended (Article 23).

84. Directive 2008/104/EC on temporary agency work requires that the basic working and employment conditions, including pay, of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. In addition, the rules on equal treatment between men and women in force at a user undertaking must be applicable to temporary agency workers.

85. The Capital Requirements Directive (2013/36/EU) legislation addresses directly the female under-representation:

“[*Recital*] 60. [...] To facilitate independent opinions and critical challenge, management bodies of institutions should therefore be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences. Gender balance is of particular importance to ensure adequate representation of population. In particular, institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority. [...] Therefore, diversity should be one of the criteria for the composition of management bodies [...]”

Article 88

“[...] 2.(a) [...] Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. [...]”

Article 91 [...]

“10. Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.”

3. European Pillar of Social Rights

86. The European Pillar of Social Rights was proclaimed and signed in November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

87. Principle No. 2 of the Pillar refers to:

Gender equality

“a. Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression.

b. Women and men have the right to equal pay for work of equal value.”

88. The gender pay gap is one of the three indicators for gender equality included in the social scoreboard that the Commission uses to monitor the implementation of the Pillar.

4. Other institutions

a) European Commission

89. Recommendation of the European Commission on strengthening the principle of equal pay between men and women through transparency (2014/124/EU). Also, in its report to the European Parliament and the Council (COM/2013/0861) on the application of Directive 2006/54/EC the Commission concluded:

“Although estimates vary as to how much of the total gender pay gap arises from pay discrimination as prohibited by Article 157 TFEU and Article 4 of the Directive, it appears to be consensual that a considerable part of it can be traced back to discriminatory practices.

Proposed 40% objective for the representation of women on Boards – under Gender balance in decision-making positions.”

b) Court of Justice of the European Union

90. The issue of equal pay raises complex legal questions, as demonstrated by the case law before the CJEU. The main findings of the CJEU in this regard are set out below.

91. Article 157(1) of the TFEU and Article 4 of Directive 2006/54/EC provide for the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration for the same work or for work to which equal value is attributed (see cases C-96/80, EU:C:1981:80, Jenkins, paragraph 22); C-237/85, EU:C:1986:277, Rummler, paragraph 11; C-17/05, EU:C:2006:633, Cadman, paragraphs 27-29).

92. The scope of Article 157(1) TFEU and Directive 2006/54/EC covers not only direct but also indirect discrimination (see to that effect, cases Jenkins, *op. cit.* paragraphs 14 and 15; C-285/02, EU:C:2004:320, Elsner-Lakeberg, paragraph 12; Cadman, *op. cit.*, paragraph 30).

93. The fundamental principle laid down in Article 157(1) of the Treaty and elaborated by the Directive precludes unequal pay between men and women for the same job or work of equal value, whatever the mechanism which produces such inequality (see, for example, C-381/99, EU:C:2001:358, Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93, EU:C:1995:155, Royal Copenhagen paragraph 45) or pay provided on a voluntary basis (4557/93, EU:C:1996:33, Lewark paragraph 21,). The source of unequal pay must be unique or single, because if the differences identified in the pay conditions of workers performing the same work or work of equal value cannot be attributed to a single source, there is nobody which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 157(1) TFEU (Lawrence, C-320/00, EU:C:2002:498, paragraph 18 ; Allonby, C-256/01, EU:C:2004:18, paragraph 46).

94. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, Barber, C-262/88, EU:C:1990:209, point 12 ; Bilka-Kaufhaus,

170/84, EU:C:1986:204, paragraph 15 ; Seymour-Smith, C-167/97, EU:C:1999:60, paragraph 23 ; Garland, 12/81, EU:C:1982:44, paragraph 5 ; Brunnhofer, *op. cit.*, paragraph 34). The concept of pay also includes payments which a worker receives from an employer even not performing any work provided in their contracts of employment (Gillespie, C-324/93, EU:C:1996:46, paragraph 13 ; Bötel, C-360/90, EU:C:1992:246, paragraph 15 ; Rinner-Kühn, 171/88, EU:C:1989:328, paragraph 7). The concept of pay does not include statutory social security benefits (Defrenne, 80/70, EU:C:1971:55, paragraph 7).

95. The terms 'the same work', 'the same job' and 'work of equal value' are entirely qualitative in character in that they are exclusively concerned with the nature of the work actually performed (see Macarthis, 129/79, EU:C:1980:103, paragraph 11 ; Rummler, *op. cit.* , paragraphs 13 et 23 ; Brunnhofer, *op. cit.*, paragraph 42). In order to determine whether the work being done by different persons is the same, it is necessary to ascertain whether, taking account of a number of factors such as the nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation (see to that effect C-400/93 Royal Copenhagen, *op.cit.*, paragraphs 32 and 33).

96. As regards the method to be used for comparing the pay of the workers concerned in order to determine whether the principle of equal pay is being complied with genuine transparency permitting an effective review is assured only if that principle applies to each aspect of remuneration granted to men and women, excluding any general overall assessment of all the consideration paid to workers (C-285/02 Elsner-Lakenberg, *op. cit.*, paragraph 13).

97. Pay systems must be based on criteria which are of importance for the performance of specific tasks entrusted to the employee' (C-109/88 Danfoss, paragraph 22).

98. The EU Member States are obliged to take the necessary measures to enable all persons who consider themselves wronged by discrimination, to pursue their claims by judicial process. Such an obligation implies that the measures in question should be sufficiently effective to achieve the objective pursued by the directive and should be capable of being effectively relied upon by the persons concerned before national courts (see judgments in C-271/91 Marshall, C-271/91, UE:C:1993:335, paragraph 22 et Paquay, C-460/06, EU:C:2007:601, paragraph 43). EU law does not prescribe a specific measure to be taken by Member States, however, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see judgments in, von Colson et Kamann, 14/83, UE:C:1984:153, paragraphs 23 et 24 ; Draehmpaehl, C-180/95, EU:C:1997:208, paragraph 25 ; Paquay, C-460/06, EU:C:2007:601, paragraph 45).

99. Whenever there is evidence *prima facie* of discrimination, it is for the employer to prove that the practice at issue is justified by objective factors unrelated to any discrimination based on sex (C-17/05 Cadman, paragraph 31). However, it is clear from the case law of the CJEU that the burden of proof must shift when this is necessary to avoid depriving workers who appear to be the victims of discrimination of

any effective means of enforcing the principle of equal pay (C-381/99 Brunnhofer, *op. cit.*, paragraph 53).

100. According to CJEU case law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in C-271/91 Marshall, *op. cit.*, paragraph 26 ; Paquay, *op. cit.*, paragraph 46 ; Camacho, C-407/14, EU:C:2015:831, paragraph 33).

101. National law may not limit the time-period for a claim on arrears of pay, if an employee did not have access to the information the level of pay for a colleague of an opposite sex performing the same work (Levez, C-326/96, EU:C:1998:577, paragraph 34). An employer who has not provided the information on the level of pay for work performed by a colleague of opposite sex cannot reasonably rely on the principle of legal certainty (C-326/97 Levez, *op. cit.*, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

102. The right of workers to a fair remuneration is at the heart of the Charter's guarantee of conditions of work that are reasonable and ensure a fair reward for labour performed. Inadequate pay creates poverty traps, which may affect not just individuals and their families, but whole communities. Inadequate pay is also an obstacle to full participation in society and thus a marker for social exclusion. More broadly, pay which lags significantly behind average earnings in the labour market are incompatible with social justice.

103. One of the constituent elements of fair remuneration is the right of women and men to equal pay for equal work or work of equal value. The right of women and men workers to equal pay has a long history in the Charter. Already in the 1961 Charter, under Article 4§3, the States Parties undertook to recognise the right to equal pay, thus going beyond mere promotion of the principle and conferring an absolute character on this provision (Conclusions II (1971)).

104. Article 20 of the Charter (and Article 1 of the 1988 Additional Protocol) guarantees the right to equal opportunities and equal treatment in matters of employment and occupation, without discrimination on the grounds of gender. It embodies the same guarantee of equal pay as Article 4§3, and further encompasses other aspects of the right to equal opportunities and equal treatment in matters of employment, such as access to employment, vocational guidance and career development.

105. All the States Parties to the Charter having accepted Articles 4§3 and/or 20 are aware that this right has to be practical and effective, and not merely theoretical or illusory (International Commission of Jurists (ICJ) against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

106. The Committee notes that UWE also invokes Article 1 of the Charter concerning the right to work. However, it considers that in accordance with its well-established case law the assessment in substance more appropriately belongs under Articles 4§3 and 20 of the Charter. As regards Article E, which is also invoked by UWE, it is clear from the very wording of Articles 4§3 and 20 of the Charter that their scope includes the prohibition of discrimination. The Committee therefore considers that it is not necessary to examine whether there has been a violation of Article E in conjunction with Articles 4§3 and 20 of the Charter.

107. Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today. The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.

108. In this respect, the Committee draws attention to the main statistical indicators which it will take into account in the examination of the instant complaint. Firstly, the unadjusted gender pay gap, which is defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men (indicator published by Eurostat). Secondly the gender overall earnings gap measures the impact of three combined factors - the average hourly earnings, the monthly average of the number of hours paid before adjustment for part-time work and the employment rate - on the average earnings of all women of working age, whether employed or not, compared to men (also published by Eurostat). Finally, with respect to the representation of women in decision-making positions, the Committee will rely mainly on statistics on the share of women on supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality (EIGE)).

109. The Committee wishes to emphasise that gender pay gap indicators do not measure discrimination as such, rather they reflect a combination of differences in the average pay of women and men. The unadjusted gender pay gap, for example, covers both possible discrimination between men and women (one component of the "unexplained" pay gap) and the differences in the average characteristics of male and female workers (the "explained" pay gap). Differences in the average characteristics result from many factors, such as the concentration of one sex in certain economic activities (sectoral gender segregation) or the concentration of one sex in certain occupations (occupational gender segregation), including the fact that too few women occupy the better paid decision-making positions (vertical segregation).

110. The situation concerning the gender pay gap as well as the diversity of the solutions that the States have proposed to promote women's right to equal pay, together with a varying degree of success in achieving the ultimate goal – guaranteeing gender equality in practice - have prompted the Committee to take a fresh look at the provisions of the Charter with a view to analysing and clarifying the obligations arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

111. In this respect, the Committee wishes to recall its approach to the interpretation of the Charter. Thus, in interpreting the provisions of the Charter, it has to take into account not only current conditions and relevant international instruments, but also emerging new issues and situations. In other words, the Charter is a living instrument and therefore the Committee interprets the rights of the Charter in a dynamic manner having regard to present day requirements.

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

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

- The obligations of the State as regards the recognition and the enforcement of the right to equal pay under Articles 4§3 and 20.c of the Charter. These obligations include the following:
 - recognition in legislation of the right to equal pay for equal work or work of equal value;
 - ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;
 - ensuring pay transparency and enabling job comparisons;
 - maintaining effective equality bodies and other relevant institutions;
- The obligations of the State to adopt measures to promote the right to equal pay for equal work or work of equal value, under Article 20.c of the Charter. These obligations include the following:
 - collection of reliable and standardised data with a view to measuring the gender pay gap;

- adoption of measures to promote equal opportunities through gender mainstreaming.

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

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

113. Articles 4§3 and 20.c of the Charter read as follows:

Article 4 – Right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

...

3. to recognise the right of men and women workers to equal pay for work of equal value;

...

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

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

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

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

...

- c. terms of employment and working conditions, including remuneration;

...”

A – Arguments of the parties

1. The complainant organisation

Recognition of the right to equal pay in legislation

114. UWE states that there are significant shortcomings in the legislation as there is no sign of gender mainstreaming in the subsequent policies adopted by Finland. In addition, there is no monitoring body and above all, no checks are provided for in the legislation or are carried out.

Effective remedies

115. UWE highlights practical obstacles for initiating proceedings. Besides the financial costs, if a female worker challenges the company for breaching the principle of equal pay for equal, similar or comparable work, she runs a considerable risk of being dismissed quite rapidly, albeit on another pretext.

116. Another obstacle is the limitation period that applies in pay disputes, which can be somewhat short when a woman has been discriminated against over a long career. Therefore, embarking on such proceedings is an extremely challenging process according to UWE, producing a very uncertain result.

Pay transparency and job comparisons

117. Concerning pay transparency and wage data, UWE states that women who make complaints find it hard or even impossible to obtain comparative data concerning the wages paid. The risks of breaches of the principle of the confidentiality of personal data may block the powers that labour inspectorates allegedly have to obtain the necessary information. What these powers actually involve remains obscure and no figures are provided on cases where they are used. The principle of confidentiality and the extent to which it is used makes it hard to assess the real access to pay data, making difficult the enforcement of the prohibition of pay discrimination.

118. Regarding job classifications systems, UWE underlines the importance of the number of non-neutral classifications. There is no requirement to establish neutral classifications or to check on existing classifications by the employment service, based on a reliable instrument developed by experts. Finland does not explain the component elements or characteristics of this instrument, or the pay gap calculation method for companies. This makes it impossible to assess the latter's relevance in terms of exoneration for small and medium enterprises, which escape the legislation that applies to larger companies. There would therefore be a violation of the Charter in this respect.

Equality bodies and other institutions

119. UWE in its allegations refers to several bodies. The Ombudsperson for Equality provides legal guidance and advice and publishes an annual report. The Ministry of Social Affairs and Health runs a unit on equality issues, which is in charge of coordinating and preparing Finnish government policy on gender equality. There is also an independent Equality Committee, which ensures compliance with the legislation on gender equality and discusses and resolves related problems. Finally,

the Council for Gender Equality is a parliamentary body appointed by the Finnish government for the same term of office as the parliament, whose goal is to promote gender equality in society. UWE further states that the labour inspectorates play an important role in social dialogue.

120. However, according to UWE, in Finland, probably through political choice, equal pay for women and men for equal work is not an absolute priority for these bodies.

121. UWE considers that these bodies have a limited role. This, together with the cost of anti-discrimination proceedings for the victims and the fact that the limitation period for pay disputes result in a lack of enforcement in practice of the principle of equal pay.

2. The respondent Government

General remarks

122. The Government alleges that UWE has lodged the same complaint against 14 other States Parties that have also ratified the 1995 Additional Protocol to the European Social Charter and observes that the allegations apply to pan-European or global trends and figures. In the Government's view, the complaint is vague, general and insufficiently substantiated, and in many parts, Finland is only mentioned in connection with other States Parties.

123. The Government further notes that the complaint only applies to Article 20, insofar as equal opportunities and equal treatment in terms of pay are concerned. Therefore, the Government's observations only focus on equal pay aspects relating to Article 20.

Recognition of the right to equal pay in legislation

124. In Finland, gender equality and equal pay are governed by the Constitution of Finland (731/1999) and the Act on Equality between Women and Men (609/1986).

125. The Government recalls the Committee's most recent conclusions regarding Finland. Under Article 4§3, the right of women and men to equal pay for work of equal value must be expressly specified in legislation (see, for instance Conclusions 2014, Iceland, Luxembourg). The legislation must offer an appropriate and effective means to rectify the pay-related discrimination, including access to the court. The burden of proof must lie with the defendant, and everyone who has suffered from gender pay discrimination must be entitled to sufficient compensation, *i.e.*, damages suffered by

the victim and to prevent similar discrimination in future. In its interpretation policy, the Committee has, among other things, found it relevant to examine whether the national legislation specifies a maximum limit for compensation to be paid in discrimination cases (see, for instance Conclusions 2014, Greece).

126. In 2010, the Committee decided that it would review every other year gender pay equality under both Article 4§3 and Article 20. In its conclusions on Article 4 in 2014, the Committee examined pay comparisons and asked for more information on this in the next report. The Committee noted that the situation in Finland was not in conformity with Article 4§3 of the Charter in that the legislation does not enable the restoration of the employment relationship reinstatement where an employee has been dismissed due to a claim relating to pay discrimination. Finland delivered information on pay comparisons as it reported on Article 20 in its 11th periodic report in October 2015. In its Conclusions 2016 relating to Article 20, the Committee noted the measures that had been taken during the previous reporting period to reduce the gender pay gap and promote equal opportunities. The Committee also noted Finland's further clarifications relating to pay comparisons. The Committee noted that the situation in Finland was in conformity with Article 20 of the Charter.

Effective remedies

127. The Government observes that, in its complaint, UWE appears to allege that if a female worker demands equal pay for equal, similar or comparable work, she runs a considerable risk of being dismissed quite rapidly, albeit on another pretext. According to UWE, the limitation period that applies in pay disputes can be considered as short.

128. The Government clarifies that is the contrary in Finland, as the threshold for terminating an employment contract is very high. Dismissal on individual grounds, i.e., for personal reasons, always requires an appropriate and serious reason, such as a severe breach of obligations or negligence. When an employee is dismissed on individual grounds, it is often the case that the parties have lost confidence in each other and the prerequisites for continuing the employment relationship no longer exist. Where the employee's behaviour has been reprehensible, dismissal on individual grounds always requires that the employee be warned and heard in advance. The legislation stipulates even stricter prerequisites for terminating an employment contract.

129. Furthermore, dismissal on collective grounds on the other hand requires that the amount of work available has substantially and permanently decreased due to financial, production-related or reorganisational reasons. However, the employment contract must not be terminated if the employee can be transferred to or trained for other duties. According to Chapter 13, Section 9, paragraph 1 of the Employment Contracts Act, employees' pay claims become statute-barred five years after the due date, unless the period of limitation has been interrupted before that time. The same period of limitation also applies to other claims referred to in the Employment Contracts Act. However, the period of limitation concerning bodily injury caused to an employee

is 10 years. After the termination of employment, a claim as referred to in subsection 1 will expire unless a suit is filed within two years of the date when the employment ended. The short suit-filing period after the end of employment has been considered appropriate for the quick settlement of any disputes at the end of the employment relationship. The short suit-filing period after the end of employment can also be justified in terms of evidence presented in court.

130. Discrimination in working life may be subject to compensation which shall be claimed by legal action brought at the District Court. In the event of pay discrimination, action for compensation shall be brought within two years of the violation of the discrimination prohibition. Compensation may be imposed regardless of whether the discrimination causes financial damage. It is compensation for the insult caused by the discrimination. The compensation shall be paid by the party who has violated the discrimination prohibition. The compensation shall amount to no less than €3,570 (June 2015). However, the court may reduce the compensation beyond the minimum amount prescribed above or the liability to pay compensation may be waived completely, if this is deemed reasonable in view of the offender's financial situation and attempts to prevent or eliminate the effects of the action. Generally, no maximum amount has been determined for the compensation. An exception to this are cases concerning employee recruitment, where the compensation payable shall not exceed €17,840 (June 2015) for a worker where the employer is able to show that she/he would not have been chosen for the job even if the choice had been made on non-discriminatory grounds.

131. In addition to or instead of compensation, the party discriminated against may claim compensation for financial loss incurred due to gender-based discrimination. The range of sanctions for discrimination is supplemented by criminalisation under the Criminal Code.

132. In 2014, the Ministry of Social Affairs and Health published a report on the efficiency of the monitoring provisions laid down in the Act on Equality between Women and Men. According to the report, courts rarely deal with discrimination cases. It highlighted that the overall monitoring mechanism has been found difficult from the perspective of the party discriminated against.

133. Since then, the Act on Equality between Women and Men has been complemented with the opportunity for reconciliation as a new means of legal protection. The provisions laid down in the Act on Equality between Women and Men on the promotion and confirmation of reconciliation entered into force in November

2016. The possibility of reconciliation improves the legal protection of victims of discrimination by strengthening the low-threshold means of legal protection specified in the Act. The use of the reconciliation procedure is voluntary and based on mutual consent. The goal is to reach an amicable settlement. Monetary compensation may also be agreed upon during the reconciliation procedure. The National Non-Discrimination and Equality Tribunal may be requested to confirm the reconciliation, which shall be enforced in the same manner as a final judgment. The possibility of reconciliation also applies to cases of pay discrimination as referred to in the Act on Equality between Women and Men.

134. According to Section 9a of the Act on Equality between Women and Men, if a person considers that they have been a victim of discrimination under the provisions of the Act, relating to pay, for example, and presents a matter to a court of law or to a competent authority and the facts give cause to believe that the matter is one of gender discrimination, the burden of proof lies on the defendant. The defendant must prove that there has been no violation of gender equality but that the action was for an acceptable reason not due to gender. This also applies to pay-related discrimination.

135. Legal proceedings often require a legally trained assistant. Legal aid can be applied for and paid either partially or fully by the State.

Pay transparency and job comparisons

136. According to the Government Bill HE 19/2014, the employer should treat employees in similar and comparable situations in the same way. The comparability of situations would be decided on an employer-specific basis, taking into account the employees' position and duties at the workplace.

137. The employer should also follow the requirement for equal treatment when granting benefits based on the employment relationship. Differences between benefits granted in comparable situations could only be based on reasons specified by law. According to legislative drafts, the requirement for equal treatment could, in some situations, also require the employer to take active measures to even out the differences within a reasonable period of time. In this context, legislative texts refer to Supreme Court decisions 2013:10 and 2013:11, which assessed the relationship between differences in pay due to pay systems based on various collective agreements and the requirement for equal treatment. Even though the application of various pay systems was not deemed to breach the prohibition of discrimination, the employer should, according to the principle of equal treatment of employees, strive to eliminate such differences in pay within a reasonable period of time. The reason for different treatment may be an employee's different position in the employer's organisation. The number and type of benefits based on the employment relationship may also vary according to the employee's position and duties.

Equality bodies and other institutions

138. The Act on Equality between Women and Men is monitored by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal (Act on the Ombudsman for Equality, 1328/2014, and Act on the National Non-Discrimination and Equality Tribunal, 1327/2014). The Ombudsperson's task is to monitor the respect of

the Act on Equality between Women and Men, particularly the prohibitions of discrimination and of discriminatory vacancy announcements. The Ombudsperson's work for equality focuses on providing advice and guidance, which victims of discrimination can seek. One of the Ombudsperson's important duties is to issue statements on whether the Act on Equality between Women and Men has been breached, which helps the victims assess whether the Act on Equality between Women and Men has been breached in their case and whether they have reason to take further legal or other measures. The majority of the Ombudsperson's contacts are about working life, particularly pregnancy and parenthood, recruitment and pay.

139. The Ombudsperson's statements are not legally binding. Where his/her instructions or advice is not followed, however, the Ombudsperson may take the case to the National Non-Discrimination and Equality Tribunal. The Tribunal may prohibit the employer from continuing or repeating the discrimination, imposing a fine if necessary. A trade union confederation may also take a case to the Tribunal.

140. If the Ombudsperson for Equality notices that the employer does not prepare a gender equality plan in accordance with the Act on Equality between Women and Men despite the Ombudsperson's instructions and advice, the Ombudsperson may set a reasonable deadline when the planning obligation must be fulfilled. Failure to meet the deadline may result in the National Non-Discrimination and Equality Tribunal may, on the Ombudsperson's proposal, obliging the employer to prepare the plan by a new deadline, under penalty of a fine if necessary.

141. The labour protection authorities monitor the respect of the Employment Contracts Act and adherence to generally applicable collective agreements. The monitoring is regulated by the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006). Respect of collective agreements is also monitored by employers and employees' organisations.

142. The Government notes that in its complaint, UWE incorrectly alleges that occupational safety inspectors increasingly fail to investigate questions and report breaches that could lead to a criminal procedure. The Government explains that gender-based discrimination or adherence to the Act on Equality between Women and Men is not monitored by labour protection authorities. However, labour protection authorities monitor the provisions of the Employment Contracts Act relating to gender discrimination. If there are likely grounds for suspecting that a work discrimination offence has taken place, the labour protection authorities must report this to a public prosecutor.

143. The labour protection authorities monitor adherence to the Non-discrimination Act in working life. In suspected cases of discrimination based on multiple grounds,

one of which is gender, monitoring requires close co-operation between the Ombudsperson for Equality and the labour protection authorities to determine the competent authority. In suspected cases of discrimination based on both gender and grounds for discrimination prohibited by the Non-discrimination Act, the Ombudsperson for Equality shall monitor the case as regards gender-based discrimination and the labour protection authority as regards grounds for discrimination prohibited by the Non-discrimination Act. In the event of intersecting discrimination, where a number of factors together lead to discrimination, the competent authority is the labour protection authority, even if one of the grounds for discrimination is gender.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

144. The Committee recalls that under Articles 4§3 and 20.c of the Charter (and Article 1.c of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and work of equal or comparable value. The concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

145. The States Parties are obliged to enact legislation explicitly imposing equal pay. It is not sufficient to merely state the principle in the Constitution. States must ensure that there is no direct or indirect discrimination between men and women with regard to remuneration.

146. The principle of equal pay precludes unequal pay irrespective of the mechanism that produces such inequality. The source of discriminatory pay may be the law, collective agreements, individual employment contracts, internal acts of an employer.

147. Any legislation, regulation or other administrative measure that fails to comply with the principle of equal pay must be repealed or revoked. The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter. It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, individual employment contracts or internal company regulations that is incompatible with the principle of equal pay (Conclusions XIII-5, Statement of Interpretation on Article 1 of the 1988 Additional Protocol).

148. In the legal framework of Finland, the main regulatory instruments in relation to discrimination on the grounds of sex in general and on equal pay for equal work or work of equal value in particular include inter alia the following: Act on Equality between Women and Men, as well as the Non-Discrimination Act. The Act on Equality between Women and Men (hereafter the Act on Equality) prohibits discrimination based on gender, and it specifically includes pay discrimination. The legislation has transposed the main EU Directives in the field of equal pay.

149. On this basis, the Committee considers that the obligation to recognise the right to equal pay for work of equal value has been satisfied.

Effective remedies

150. The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely.

151. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter.

152. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol).

153. Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.

154. The Committee notes the claim of UWE that there is very limited or no domestic case law on gender pay discrimination. The Committee further notes that the Ombudsperson for Equality has stated in its submissions that only a few cases of pay discrimination have been brought to its attention. The Ombudsperson reports that in 2012, the total number of cases was 152. In 2014, it was 211. About half of the cases related to discrimination in working life, and a few of these concerned specifically equal pay, including both basic pay and various kinds of bonuses and the effect of parental leave on wages. In the period 2014-2017, the number of written complaints concerning equal pay was around 10 to 20 complaints per year, but there is no information on the exact number of cases per year which specifically concern pay discrimination.

155. The Committee further observes that, concerning access to courts, the Ombudsperson may not take a case to a court of law in her/his own name, but she or

he could give legal assistance to victims. In practice, according to the Ombudsperson's observations, it does not happen because legal assistance is provided in most cases by trade unions. Moreover, the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on gender equality: Finland 2018 states that there is no formal barrier to access to courts, although some obstacles may remain because of the costs of the proceedings.

156. The Committee observes that, as regards the rules of the burden of proof, legislation provides for a shift in discrimination cases.

157. The Committee also notes that, according to the above-mentioned Country Report, the remedies under the Act on Equality include the right to compensation through a court within two years after the violation has taken place (Section 12 of the Act). Compensation may be awarded for violations of Section 8 and 8a-d of the Act, which cover discrimination in working life, in educational institutions, in labour market organisations, and in the provision and access to goods and services. Whereas the compensation under the Act on Equality is appropriate in the sense that there is no upper limit, except for cases where several applicants to a post have been discriminated against, it is problematic that the compensation may be reduced or removed altogether. The above-mentioned Country Report highlights that this may happen if it is considered reasonable taking into account the economic circumstances of the violator, any attempts on her or his part to prevent harmful effects caused by the act, or other circumstances. The Report further states that these provisions are not in line with the requirements of effectiveness, proportionality and dissuasiveness of compensation.

158. The Committee in its previous assessment under the reporting procedure and in a decision in a collective complaint in respect of Finland, observed that there was no provision in Finnish law for declaring a retaliatory dismissal null and void and reinstating a victim of such a dismissal. Therefore, the Committee held that the situation was in breach of the Charter (Conclusions 2012, Finland, Article 20; Conclusions 2014, Finland, Article 4§3; see also *Finnish Society of Social Rights v. Finland*, Complaint No. 106/2014, decision on admissibility and merits of 8 September 2016). The legislation has not changed in this respect.

159. As the law does not make provision for reinstatement in cases where a worker is dismissed in retaliation for bringing an equal pay claim, the Committee considers that the obligation to ensure access to effective remedies is not satisfied.

Pay transparency and job comparisons

160. The Committee considers that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities.

161. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect.

162. In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken into account. The Committee further observes that the notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination. Moreover, such systems must consider the features of the posts in question rather than the personal characteristics of the workers (Conclusions XV-2, Article 4§3, Poland).

163. The Committee considers that the possibility of making job comparisons is essential to ensuring equal pay. Lack of information on comparable jobs and pay levels could render it extremely difficult for a potential victim of pay discrimination to bring a case to court. Workers should be entitled to request and receive information on pay levels broken down by gender, including on complementary and/or variable components of the pay package. However, general statistical data on pay levels may not be sufficient to prove discrimination. Therefore, in the context of judicial proceedings it should be possible to request and obtain information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.

164. Moreover, national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important means of ensuring that the equal pay principle is effective under certain circumstances, particularly in larger companies or specific sectors where the workforce is predominantly, or even exclusively, of one sex (see Statement of interpretation on Article 20, Conclusions 2012). The Committee considers notably that job comparisons should be possible across companies, where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

165. As regards pay transparency in Finland, the Committee notes that certain measures are enshrined in legislation. Section 6b of the Act on Equality requires a regular pay audit (pay mapping) to be performed. The Committee further observes from the above-mentioned Country Report that Finland has taken measures to ensure application of the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, such as the creation of equality plans, collecting segregated data and carrying out pay surveys.

166. The Committee also notes the introduction of and the verification and monitoring of job classification systems in Finland. The Committee notes that, under the Act on Equality, surveys are carried out to determine the underlying causes of any pay differentials between men and women. The employer is responsible for undertaking pay surveys. The Act on Equality obliges the employer to draw up a gender equality plan that includes a pay survey. Workers' representatives must be given sufficient opportunities to participate in the drafting of the plan. The Act on Equality also includes an obligation to communicate the equality plan and the included pay survey to workers and to inform them of any updates. A gender equality plan at work must be drafted at least every other year under the provisions of the Act on Equality.

167. The Committee observes that the Government has indicated that the coverage and quality of equality plans and pay surveys need improvement. At present, workers' representatives have the opportunity to participate in and influence the drafting of the equality plan. If pay surveys reveal unfounded pay differences between men and women, these must be analysed and accounted for. If the pay differences are unfounded, the employer must take corrective action.

168. The Committee notes nevertheless that Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the Equal Remuneration Convention (No. 100) in respect of Finland (2017) indicates that in carrying out pay surveys, pay is usually only compared between workers with the same occupational title or workers in the same task groups and that it remains to be seen whether the scope of comparisons will be extended beyond this. The CEACR also highlighted that, according to survey results, only 17% of workplaces had conducted a comparison of the pay of men and women across boundaries set by collective agreements. The Ombudsperson for Equality has also indicated in its observations that the principle of equal pay is understood very narrowly in many Finnish workplaces and that employers sometimes claim that it is not possible to compare pay between workers placed at different pay levels.

169. The Committee also notes from in the above-mentioned Country Report that under Finnish legislation the employer is not obliged to provide information on a comparator (fellow worker) who refuses the disclosure of her/his pay details. A workers' representative may receive information on an individual worker's pay only with her/his consent. At the request of the alleged victim of pay discrimination the workers' representative may request such information from the Ombudsperson for Equality. The Ombudsperson can then request the employer to provide the information, if there are reasonable grounds to suspect discrimination. Thus, it is possible to obtain specific pay data within the framework of an ongoing proceeding.

170. The Committee observes that the Government in its submissions states that the introduction of new job classification systems has narrowed the gender pay gap. The reduction has been more successful in specific cases, such as among workers who earn the highest wages or those in the highest-level positions. This reduction of pay discrimination has had a more prominent impact in the public and municipal sectors than in the private sectors. In their assessment of the new job comparison and classification systems, several Finnish trade unions have pointed out that considerable differences remain between the pay of men and women working in middle management.

171. The Committee notes that comparisons can be made in Finland between the pay of workers employed by the same employer, and that such comparisons are not limited to a single working or functional unit. Comparison of pay between workers in separate units can also be made and in these cases, consideration is also to be given, for example, to the impact of different pay levels in different parts of the country. Under the reporting procedure, the Committee has considered that the situation in Finland on this point was in conformity with the Charter (Conclusions 2016, Finland, Article 20).

172. On the basis of the above, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons is satisfied.

Equality bodies and other institutions

173. The Committee considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (ICJ v. Portugal, Complaint No. 1/1998, op. cit., §32). The Committee has considered that measures to foster the full effectiveness of the efforts to combat discrimination include setting up of a specialised body to monitor and promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Article 1§2, Iceland). The status of such equality bodies in terms of their mandate, their independence and resources must be clearly defined. In this context, the Committee also has regard to the criteria for national human rights institutions set out in the so-called Paris Principles adopted in 1993 by the United Nations General Assembly.

174. As regards the mandate of equality bodies, the Committee considers that it should include provision for functions such as the following:

- monitoring and promotion: in cooperation with labour inspectorates or other relevant bodies, monitor the situation regarding gender discrimination, including in respect of pay, and produce regular reports; conduct inquiries at their own initiative and make recommendations; raise awareness of the equal pay principle across society.
- decision-making: receive, examine, hear cases of discrimination; issue binding or authoritative decisions on complaints concerning alleged discrimination and ensure the implementation of such decisions.
- assistance to victims: provide personal and legal support to complainants; mediate settlements in cases of discrimination; represent victims in cases of discrimination; and monitor the implementation of decisions in such cases.

175. The Committee further considers that in addition to having a clear and comprehensive mandate, these specialised equality bodies must be equipped with the necessary human and financial resources as well as infrastructure to ensure that they can effectively combat and eliminate pay discrimination.

176. The Committee wishes to emphasise that it is not within the scope of the examination of this complaint to conduct an exhaustive analysis of the conformity of the situation with the above criteria. The Committee will restrict its examination to assessing in light of the information available to it the effectiveness of equality bodies and other relevant institutions in ensuring equal pay for equal work or work of equal value.

177. The Committee observes that the supervisory system established in Finland by the Act on Equality, composed of the Ombudsperson for Equality and the Anti-Discrimination and Equality Board, was strengthened. The independent status of the Ombudsperson for Equality has been reinforced and there has been an administrative restructuring to this end. Moreover, the Ombudsperson has a broad mandate, which combines functions of monitoring and promotion of assistance to victims as well as decision-making.

178. The Committee notes that according to the Ombudsperson for Equality's observations, the Act on Equality does not apply to all pay differences in the Finnish labour market. The personal scope of application of the Act on Equality covers workers employed by the same employer and those workers whose pay has a single source on which the pay depends. The Ombudsperson also points out that the enforcement and supervision role is limited due to the allocated resources. The Committee further notes that the Government itself indicates that the Ombudsperson for Equality has limited resources for carrying out the task of monitoring the obligation of carrying out equality planning, and that more resources are needed for this task.

179. However, the Committee observes that there has been an effort to improve the institutional set-up. The Discrimination Board (concerned with gender equality) and Equality Tribunal (concerned with ethnic discrimination), were united to form the new Non-Discrimination and Equality Tribunal with a broader mandate. The Committee notes from the European Network of Legal Experts in Gender Equality and Non-Discrimination Report on "Equality bodies making a difference" 2019 that the

Ombudsperson for Equality has engaged in strategic planning with associated annual workplans, and as having encouraged formal stakeholder engagement.

180. The Committee also notes that the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on non-discrimination: Finland 2018 points out that equality is an important value in Finnish society and it is seldom questioned. The Ombudsperson for Equality is generally recognised as an expert authority on equality in Finland and is often invited to speak as an expert in parliamentary committees, in the media and at public events, such as seminars and training events. Despite some political criticism, the level of financing of the Ombudsperson has remained stable in the state budget since 2015, where the budget was increased due to the expansion of the mandate and tasks. The above-mentioned Country Report also refers to the fact that the Ombudsperson has consistently criticised the level of resources as insufficient, given that the number of cases brought to the Ombudsman has quadrupled in the three years following the expansion of the mandate.

181. Since 15 November 2016, the Ombudsperson for Equality has had statutory powers to promote reconciliation in gender discrimination matters, based on the consent of both parties. Under the new provision on promotion of reconciliation, the parties can agree to settle their dispute also by agreeing on a financial compensation. The parties may submit the settlement to the Non-Discrimination and Equality Tribunal for approval. After the approval, the settlement is enforceable in the same manner as a court decision. There has not been yet any pay discrimination case where this new provision has been applied.

182. Taking into account all of the above considerations, the Committee notes that the Ombudsperson for Equality has a broad mandate and its role has been reinforced in recent years, both through the allocation of more resources (despite remaining concerns about funding) and through its institutional structure. The Committee therefore considers that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is satisfied.

Concluding assessment

183. Firstly, the Committee observes that the legislation prohibits specifically pay discrimination. Therefore, the Committee considers that Finnish legislation satisfies the obligation to ensure the right to equal pay.

184. Secondly, the Committee considers that access to courts is possible for discrimination victims and that the Ombudsperson may provide legal assistance in litigation, although the high costs of proceedings may be a deterrent for discrimination victims. However, the law does not make provision for reinstatement in cases where a worker is dismissed in retaliation for bringing an equal pay claim. In the light of this element, the Committee considers that the obligation to ensure access to effective remedies is not satisfied.

185. Thirdly, the Committee notes that there have been efforts to introduce transparent pay systems, as well as in verifying and monitoring job classification systems. Job comparisons are also possible in practice. The Committee considers that the principle of pay transparency and the obligation to establish clear job comparison methods is therefore guaranteed in practice.

186. Finally, the Committee notes that the Ombudsperson for Equality has as one of its main priorities the effective implementation of equal pay and has a broad mandate which has been strengthened in recent years. The Committee considers therefore that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is satisfied.

187. In the light of the above considerations, the Committee holds that there is a violation of Articles 4§3 and 20.c of the Charter in so far as the law does not provide for reinstatement in cases where a worker is dismissed in retaliation for bringing an equal pay claim.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

188. Article 20.c of the Charter reads as follows:

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

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

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

...

c terms of employment and working conditions, including remuneration;

A – Arguments of the parties

1. The complainant organisation

189. UWE points out that the labour market in Finland suffers from gender segregation and stereotypical role expectations. Women earn lower wages than men, participate in fixed-term and part-time work, and experience horizontal and vertical discrimination in the labour market. Horizontal discrimination refers to gendered segregation between different occupations and sectors, reflected already in educational choices.

190. The gender pay gap includes three different elements: differences in salaries; number of hours worked during a period of activity, which includes part time jobs; and consequences of interrupting work time for any reason, such as taking care of children, maternity or paternity leaves, etc. According to UWE, in 2017 the gender pay gap in Finland was 73.7%, the hourly gender pay gap was 18.4% and the gender employment rate gap was 7.9%. The indicator which the Government relies on is calculated on the basis of hourly wages and therefore does not show the pay inequalities relating to the fact that women are much more likely to be confined to part-time work than men, which is the case in Finland. The statistics and figures provided are therefore not fully reliable.

191. UWE states that, while acknowledging in its submissions that a significant gender pay gap can clearly be seen in the overall statistics for all sectors taken together, the Government maintains that the gaps are much narrower in the case of the statistics by sector. It is probably to be understood therefore that they are wider in some sectors than in others.

192. UWE further states that there are important limitations in the gender equality policy and gender mainstreaming actions promoted by the Government. UWE notes that the employment policy mainly involves collective bargaining at company level, but the latter is not always possible, given inadequacies in terms of staff representatives and their lack of interest and of information. The policy is also disparate in nature and inconsistent. Moreover, the various existing bodies are not provided with basic training in gender mainstreaming to enable them to implement internal plans or measures. There is no general framework to effectively promote equality and the Government should introduce one.

2. The respondent Government

193. In its response, UWE observes that the official pay statistics exclude small-sized enterprises and claims that it is most probable that the gender pay gap is even higher in these enterprises. The Government notes that the Statistics Finland's pay statistics comply with the Eurostat regulations that do not require the statistical authorities to compile statistics on enterprises with fewer than 10 employees. The Government further notes that according to Statistics Finland, the gender pay gap is not higher in small-sized enterprises in Finland. In fact, it is higher in larger enterprises. According to Statistics Finland's Structure of Earnings statistics for 2016, women's average total earnings amounted to 80% of men's average total earnings in enterprises with more than 250 employees. The corresponding figure was 86% in enterprises with 10–25 employees.

194. As observed by the UWE, the gender equality planning obligation does not apply to workplaces with less than 30 employees. However, the Act on Equality between Women and Men obliges every employer to promote equality between women and men within working life in a purposeful and systematic manner (Section 6). Every employer must promote equality between women and men in terms of employment, especially in pay.

195. In the public sector, State agencies and bodies are comprehensively using analytical pay systems based on the requirements of the position and the employee's performance. Women and men working for the same employer in practice receive equal pay for equal work or equal value. In 2016, women's earnings amounted to 98.5% of men's earnings, taking into account the requirements of the position and the employer. The value of the equal pay index increased and the gender pay gap decreased by over 2.1 percentage points from 2006 and by 0.8 percentage points from 2010 to 2016.

196. In December 2016, State agencies and bodies employed 72,981 people, amounting to 3.0% of the employed labour force. Of these personnel, 49% were women and 51% men. Even though the shares of women and men are equal, on average, they work in different fields and positions. The State's business sector services and research activities are gender-equal fields. The fields most clearly dominated by women are teaching and education services as well as social, employment and health services. By contrast, security operations are clearly dominated by men. In terms of duties, specialist and practical positions are gender-equal, whereas in managerial positions, the proportion of men was 65% and that of women 35%. In the top management of ministries, the proportion of women is even a bit higher. In the past few years, the proportion of women has increased in both specialist and managerial positions.

197. The Government states that the average gender pay gap in the entire Finnish labour market is 16.3%. On average, according to the Government women's earnings amount to 84.9% of men's earnings in the private sector, 86.5% in the municipal sector and 86.8% in the State sector. Major underlying factors include education and career choices made by women and men. Segregation of the labour market accounts for a significant proportion of the gender pay gap. There are differences in the labour market position of women and men, and atypical employment relationships are more common for women than for men. Women also use more family leave than men do, which affects their careers and pay. The determination and level of employees' pay are influenced by collective agreements and pay systems applied in the field and by the company. There are very many structural factors behind the gender pay gap.

198. The Government further presents the different elements of the structural gender pay gap. In the Finnish labour market, men and women to a large extent work in different fields, professions and positions, including supervisory and managerial positions. This segregation of the labour market accounts for a significant proportion

of the gender pay gap. The objective of the Equal Pay Programme is precisely, according to the Government, to increase the number of employees in gender equal professions and the proportion of women in supervisory and managerial positions. The Programme includes significant investments in the elimination of segregation.

199. The Government recalls that UWE presents the following figures for Finland: the gender pay gap, 73.7%; the gender hours gap, 18.4%; and the gender employment rate gap, 7.9%. The Government notes that the above three figures do not describe the gender pay gap as such, instead they describe how much the different components have influenced (weighted) the gender overall earnings gap indicator. In other words, the gender overall earnings gap for Finland (24.5%) consists of 73.7% (gender pay gap), 18.4% (gender hours gap) and 7.9% (gender employment rate gap). UWE observes that part-time work has not been included in the pay comparison by gender. The Government observes that part-time work is more common among women than men in Finland. In 2016, 20% of female wage earners worked part-time compared to 10% of male wage earners. Some part-time work is involuntary. Around 73,000 women and 33,000 men worked part-time because they could not find full-time work. Statistics estimate that the number of part-time working women in Finland is low compared to Western Europe. Moreover, the overall pay gap discussed above takes into account hourly earnings by gender and thereby even the hourly earnings from part-time work.

200. Finland carried out a tripartite Equal Pay Programme in 2006–2015. During the Programme, the gender pay gap narrowed from approximately 20% by three percentage points. The 2016–2019 Equal Pay Programme is now underway. The Government has allocated resources for the Programme. The main goals of the Equal Pay Programme are to narrow the gender pay gap and realise the equal pay principle of the Act on Equality between Women and Men. The Programme closely monitors the achievement of the goals using various indicators.

201. The Government also supports gender equality and equal pay by means of a Gender Equality Programme. The Government has supported the development of pay systems in various ways, particularly systems based on how demanding the work is. The gender pay gap had most clearly narrowed for people in the most demanding positions. No similar narrowing of the gender pay gap could be detected for those in less demanding positions. The results confirm the gender equality benefits of pay systems that are based on how demanding the work is. The results also highlight factors that must be taken into account in the revamp of pay systems in terms of different groups of employees, for example.

202. The Equal Pay Programme has closely monitored the effects of collective agreements on women and men's pay. The latest assessment covers the years 2013–2016. According to the assessment, the gender difference in average earnings for regular working hours narrowed by 0.8–1.5 percentage points in various sectors from the end of 2012 to the end of 2016. Looking at the entire labour market, the assessment suggests that women's average earnings amounted to 82.7% of men's average earnings at the end of 2012 and 83.6% at the end of 2016. According to the assessment, the gender pay gap has been narrowed by monetary and mixed raises, measures specified in collective agreements, local solutions and structural factors. Looking very roughly by pay type, it can be stated that the gender pay gap is the smallest in basic salaries and the largest in total salaries.

203. In 2013–2014, the Ministry of Social Affairs and Health conducted an extensive statistical project that studied the effects of changes in working life on the labour market position of women and men and their pay in the private sector. The development of statistical materials enabled the study to be expanded to the State and municipal sector in 2014–2015. Both statistical studies look at the change in the professional structure within the past 20 years and its effects on the gender pay gap. According to the results gained, gender-based professional segregation has remained strong in spite of the changes in the professional structure. In the private sector, the change in the professional structure has had no positive effect on the narrowing of the gender pay gap. In the State sector, the change in the professional structure clearly reduced the gender pay gap. In the municipal sector, no narrowing of the gender pay gap could be seen despite the increase in women's level of education.

204. Education has a significant impact on women and men's labour market position, career development and equal pay. Gender-based division in education and career choices lays a foundation for gender-based division in working life. One of the main needs is reducing the segregation in upbringing, teaching and student counselling. The Act on Equality between Women and Men was amended in 2015 to ensure that the gender equality planning obligation is also applied to education providers and schools as referred to in the Basic Education Act. Other educational institutions were already covered by the gender equality planning obligation. Section 5 of the Act on Equality between Women and Men (609/1986) obliges authorities, education providers and other bodies providing teaching or training to ensure that girls and boys as well as women and men have the same opportunities for education, training and professional development. Moreover, according to section 5a of the Act, education providers are responsible for ensuring that each educational institution prepares a gender equality plan annually. The obligation applies even to comprehensive schools. The unequal division of care responsibility and family leave and long absences from working life, in particular, also impact women's careers and serve to maintain the gender pay gap.

The Government extended the father's quota of parental leave to nine weeks (54 working days). In addition to this, fathers can have the following family leaves after the birth of their child: parental leave after the mother has been on maternity leave (105 working days). This parental leave (158 working days) can be shared with the mother; childcare leave following the parental leave; partial child care leave if they return to work on a part-time basis.

B – Assessment of the Committee

a) Key figures as regards equal pay in Finland

205. According to Eurostat, in 2017, women's gross hourly earnings were on average 16% below those of men in the European Union (EU-28). The hourly gender pay gap stood in Finland at 16.7% in 2017, above the average gender pay gap in the EU. The gender overall earnings gap in Finland stood at 24.1% in 2014 (the average gender overall earnings gap in the EU at that time was 39.6%). The Committee notes that the gender pay gap has gone down in recent years, from 19.6% in 2011 to 16.7% in 2017. The adjusted or “unexplained” gender pay gap was 10.4% and the EU-28 average was 11.5% (2014 data, see the Eurostat study “A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data”, 2018).

b) Collection of data on equal pay and measures to promote equal opportunities

206. The Committee considers that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted, the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc.

207. The Committee considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it. The Committee here recalls its previous holding that the collection of data with a view to adopting adequate measures is essential to promote equal opportunities. Indeed, it has held that where it is known that a certain category of persons is, or might be, discriminated against, it is the duty of the national authorities to collect data to assess the extent of the problem (*European Roma Rights Centre v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and to avoid abuse) is indispensable to the formulation of rational policy (*European Roma Rights Centre v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

208. The Committee further recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (ICJ v. Portugal, Complaint No. 1/1998, op.cit., §32). Conformity with the Charter cannot be ensured solely by legislation and States Parties must take measures to actively promote equal opportunities. Besides the fact that legislation must not prevent the adoption of positive measures or positive action, the States are required to take specific steps aimed at removing de facto inequalities that affect women's and men's chances with regard to equal pay.

209. While the Committee acknowledges that the realisation of the obligation to take adequate measures to promote equal opportunities is complex, the States Parties must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (International Association Autism-Europe (AIAE) v. France, Complaint No. 13/2002, op.cit., §53).

210. Under Article 20.c of the Charter the obligation to take appropriate measures to promote equal opportunities entails gender mainstreaming which is the internationally recognised strategy towards realising gender equality. It involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination. The Committee considers that gender mainstreaming, as recommended in particular by the Committee of Ministers of the Council of Europe (Recommendation Rec(1998)14), should cover all aspects of the labour market, including pay, career development and occupational recognition, and extending to the education system (Conclusions XVII-2, Article 1 of the 1988 Additional Protocol, Greece).

211. States should assess the impact of the policy measures adopted in tackling vertical or horizontal occupational gender segregation in employment, improving women's participation in a wider range of jobs and occupations.

212. Among other measures that States could adopt to reduce the gender pay gap and which the Committee regards as relevant indicators for assessing compliance with the obligations laid down by the Charter the following are highlighted:

- adoption and implementation of national action plans for employment which effectively ensure equality between women and men, including pay;
- requiring individual undertakings to draw up enterprise or company plans to secure equal pay;

- encouraging employers and workers to deal with equality issues in collective agreements;
- raising awareness of the equal pay principle among employers, organisations and the public at large, including through the activities of equality bodies.

213. The Committee observes that the Government has made an effort to identify and analyse the main aspects of the gender pay gap and to provide for a comprehensive strategy towards gender mainstreaming, including with respect to bill drafting and budgeting. Moreover, the actions and measures taken have extended also to educational institutions, which are obliged to prepare a gender plan annually to ensure equality of opportunities. Tackling segregation in the labour market has also been one of the goals of several projects, which have focused on young's people educational choices and on eradication of gender stereotyping. Finally, a number of different measures have been adopted in Finland to encourage parents to consider a more balanced use of family leaves on one hand, and to even out the costs of family leave to employers on the other.

214. The Committee notes that the Government and the social partners since 2006 have been carrying out a tripartite Equal Pay Programme in order to ensure equal pay and reduce the gender pay gap to no more than 15% throughout the labour market. An overall evaluation of the Equal Pay Programme was conducted by an external evaluator in 2014. According to the evaluation, the most effective measures for reducing the gender pay gap relate to wages and wage formation (remuneration and contract policies, pay systems and pay surveys at workplaces), to dismantling the traditional distribution of duties between men and women, as well as to reconciling work and family balance. The 2016–2019 Equal Pay Programme is currently underway.

215. The Committee further notes the wide array of different actions included in the Programme, which is coordinated by the Ministry of Health and Social Affairs, aimed at narrowing the gender pay gap by developing women's pay and supporting structural changes in working life. However, segregation has remained strong in the last 20 years. The most female-dominated fields are still childcare, healthcare, office work, and cleaning. The share of women in these occupational groups is over 90%. Correspondingly, the most male-dominated fields and professions are construction, installation and repair of machines and electrical appliances, and lorry transportation, where men account for over 90% of the workforce. The measures adopted and the plans elaborated by the Government have not produced the results expected and planned.

216. The above-mentioned Equal Pay Programme has not been successful in this respect. The gender pay gap went down in 2011 but remained stagnant between 2012 and 2015. According to the Government, the narrowing of the pay gap has slowed down in Finland due to the worsened economic situation and smaller increases in pay compared to previous years. According to the Confederation of Finnish Industries (EK) and the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), which are among the social partners of the tripartite Equal Pay Programme, market segregation remains the main reason for the gender pay gap. In this connection, from 2004 to 2014, the change in the proportion of workers in “even

occupations”, occupations with 40–59% male or female workers, has been almost non-existent. In 2012, the proportion of workers in “even occupations” was 13% of all workers. EK has observed that addressing occupational segregation is the only sustainable measure to tackle the difference in average pay.

217. Moreover, the Committee points out that the employers under the obligation to prepare a gender equality plan, as required by the Act on Equality between Women and Men, are those who have at least 30 workers. The Government itself recognises that the gender equality plans of enterprises have to improve in practice, including its monitoring, even though all companies have to respect the principle of prohibition of pay discrimination. According to the figures published by the European Commission on respect of Finland for 2016, micro-companies (those with less than 10 workers) accounted for 93% of the total number of companies in the country. Small companies (between 10 to 49 workers) amount to 5.7%. In terms of persons employed, micro companies employ 25% of workers in Finland and small companies employ 21.6%. These companies are not monitored and do not have a legal requirement to produce gender plans.

218. In the light of the above, the Committee considers that Finland has collected reliable data and adopted a number of measures aimed at promoting equal opportunities of women in the labour market. However, these measures have not produced the results expected and in particular the gender planning measure has not been extended to companies with less than 30 workers. The gender pay gap is a persistent problem in Finland and is high in relative terms as it is above the average of the European Union. Segregation in the labour market has remained the same for the last 20 years and is entrenched. The measures adopted by the Government have not therefore been sufficient and have not resulted in measurable progress in this area.

219. The Committee holds that there is a violation of Article 20.c of the Charter on the ground that Finland has not taken appropriate measures to promote the application of the right to equal opportunities and equal treatment between men and women in the field of remuneration.

III. ALLEGED VIOLATION OF ARTICLE 20.D OF THE CHARTER AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES

220. Article 20.d of the Charter reads as follows:

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

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

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

(...)

d. career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

221. UWE states that women represent 4.3% of chairs of company boards in Finland and there are no women CEOs. According to an EU survey FROM January 2016 entitled “*Gender balance on corporate boards*”, the percentage of women on the boards of large companies in Finland is 29.2%, whereas the average figure across the EU is 22.7%. A 40% quota has been introduced for state-owned companies. UWE considers that, in spite of the legal requirement, women are markedly absent from the chairs of boards and executive committees and that it is quite apparent that both company managers and political leaders hardly comply with the legislation on gender equality and certainly not with its spirit.

222. UWE further notes that progress is slow and is confined very narrowly to the largest companies in the country and to boards of directors. Moreover, Finland does not address the issue of women in decision-making positions other than on boards of listed companies, but women are also largely absent from management boards, senior posts and executive posts in companies. The measures introduced by the law concern companies with at least 30 employees by the Act on Equality, but this implies that small firms are excluded.

2. The respondent Government

223. The Government observes that, in its complaint, UWE refers to the low proportion of women among chairs of company boards (4.3%) and alleges that there are no women CEOs in Finland. UWE refers to an EU survey of January 2016 according to which the percentage of women on boards of large companies in Finland is 29.2% and claims that this shows that the legal requirement has little effect.

224. The Government notes that the average proportion of women among the board members of listed companies was 27% after the annual general meetings held in spring 2017. The proportion was 33% in large listed companies, 27% in medium-sized listed companies and 23% in small listed companies. In 2008-2017, the proportion of women on boards of all listed companies has actually increased from 12% to 27%. In 2014-2017, the number of women CEOs in listed companies has increased from one

to seven. In 2016, six women acted as chairs of boards in listed companies (5% of all chairs).

225. The Government further notes that in companies fully owned by the State, the proportion of women on boards has long been over 40%, amounting to 44% in 2017. In listed companies with the State as the majority shareholder, the proportion of women on boards has also been over 40% in the past few years. In listed companies with the State as a minority shareholder, the proportion of women on boards was 35% (2017). In 2016, the proportion of women on boards of all companies in which the State had appointment authority was approximately 43%.

226. The Government notes that one of the goals of the Government's 2016-2019 Gender Equality programme is increasing gender equality on boards of listed companies. In 2015, the Government set the goal that the proportion of both women and men among board members of large and medium-sized listed companies is at least 40% by 1 January 2020. The Government will monitor the development and assess the need for legislation in autumn 2018. It is the Government's objective to achieve gender equality on boards according to the recommendations of the Securities Market Association's Corporate Governance Code and by the companies' own actions (Corporate Governance Code's recommendations for the representation of both genders on company boards and for company specific objectives and measures).

227. In addition, the Government underlines that, since 2004, it has been implementing a programme to increase the proportion of women on boards of State-owned companies as part of the implementation of its gender equality programme. This work has yielded results. The goal is that the proportion of both women and men among board members of companies where the State is the sole or majority shareholder is at least 40%. In companies where the State is a minority shareholder, the State must promote equality such that the companies appoint candidates for board membership in a manner that meets the equality objectives. From 2016 onwards, the proportions of women and men on boards and management teams of State-owned companies shall be annually reported in the annual report of the Finnish Government.

B – Assessment of the Committee

228. The Committee considers that Article 20.d of the Charter imposes positive obligations on States to tackle vertical segregation in the labour market, by means of,

inter alia, promoting the advancement of women in decision-making positions in private companies. This obligation may entail introduction of binding legislative measures to ensure equal access to management boards of companies. Measures designed to promote equal opportunities for women and men in the labour market must include promoting an effective parity in the representation of women and men in decision-making positions in both the public and private sectors (Conclusions 2016, Article 20, Portugal).

229. The Committee observes that according to the European Commission's 2019 Report on equality between women and men, the proportion of women on management boards of the largest publicly listed companies in countries with binding legislative measures has risen from an average of 9.8% in 2010 to 37.5% in 2018. In countries with non-binding measures, including positive action to promote gender balance, the corresponding percentages were 12.8% in 2010 and 25.6% in 2018, whereas in countries where no particular action (apart from self-regulation by companies) has been taken, the situation remained almost stagnant with 12.8% on average in 2010 and 14.3% in 2018. The overall EU-28 average was 26.7% in 2018. The Committee further observes that PACE Resolution 1715(2010) recommends that the proportion of women on management boards of companies should be at least 40%.

230. Finally, the Committee recalls that in respect of Article 20.d, as for Article 20.c, States must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

231. The Committee observes that there exists no regulatory framework on representation of women in decision-making positions in private enterprises in Finland. However, the Act on Equality between Women and Men establishes a principle of equal representation (40% quota) in public administration bodies, including advisory boards and governmental committees. The Finnish Corporate Governance Code recommends that both genders should be represented on the board of directors.

232. The Committee further notes that, according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, the proportion of women on management boards of Finland's largest listed companies is 34.4%. It was 32.3% in 2017, 28.6% in 2014 and 25.9% in 2010. On boards of state-owned companies, the share of women has been above 40% since 2009. In central government, the proportion of female managers was 43% (universities included) in 2017. The proportion of women in lower-level management positions has also gradually increased.

233. The Committee further notes that the TASURI project launched by the Government provides statistics on male and female representation in the top management of companies. The qualitative research of the project produces information on top management recruitment from a gender perspective and provides material for practical development work in the future. The target of increasing female representation on boards is to be met by the self-regulation of companies. The need for possible future legislative measures in this regard will be assessed only after an evaluation of the progress made in the context of the TSAURI project.

234. In light of the above, the Committee considers that, although the measures taken have not yet made it possible to achieve a sufficiently balanced representation of women and men, the Government has satisfied its obligation to promote the advancement of women in decision-making positions in private companies.

235. The Committee holds that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions in private companies.

IV. REQUEST FOR COMPENSATION

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

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

CONCLUSION

For these reasons, the Committee concludes:

- as regards recognition and enforcement of the right to equal pay for work of equal value,
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - unanimously, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that access to effective remedies is not ensured;
 - by 14 votes to 1, that there is no violation of Articles 4§3 and 20.c of the Charter as regards pay transparency and job comparisons;
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies;
- unanimously, that there is a violation of Article 20.c of the Charter on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- unanimously, that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions within private companies.



Giuseppe PALMISANO
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary

APPENDIX

Decision on admissibility

DECISION ON ADMISSIBILITY

4 July 2017

University Women of Europe v. Finland

Complaint No. 129/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 293rd session in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 24 August 2016 as number 129/2016, lodged by University Women of Europe (“UWE”) and signed by Ms Anne Nègre, a lawyer appointed by the President of UWE, Ms Edith Lommerse, requesting the Committee to find that the situation in Finland is not in conformity with Articles 1, 4, 4§3 and 20 of the Revised European Social Charter (“the Charter”), read alone or in conjunction with Article E, as well as with the 1961 Charter and Article 1 of the 1988 Additional Protocol; the complaint was notified to the Government of Finland (“the Government”) on 27 September 2016;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government on the admissibility of the complaint registered on 15 December 2016;

Having regard to the response submitted by UWE to the Government's observations on 20 March 2017;

Having regard to the additional observations of the Government registered on 19 May 2017;

Having regard to the Charter, and in particular to Articles 1, 4§2, 4§3, 4§5, 20 and E, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

Article 4 – Right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

(...)

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;

(...)

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

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

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

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

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.”

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 4 July 2017;

Delivers the following decision, adopted on the above-mentioned date:

1. UWE alleges that the situation in Finland constitutes a violation of Articles 1, 4, 4§3 and 20 of the Charter, read alone or in conjunction with Article E, as well as the 1961 Charter and Article 1 of the 1988 Additional Protocol. UWE invokes the following grounds:

a) The first concerns the pay gap between men and women in Finland, which still persists and is unfavorable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation enacted in this area. In this respect, UWE also alleges that, in practice, the bodies which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfill their task in fighting discrimination, thus rendering existing legislation ineffective. UWE cites the work in particular of the Ombudsman and the labour inspectorate;

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies; the percentage of women

at head of an enterprise is 4.3%, and 29.2% is the percentage of women present in boards of big enterprises.

2. In its observations, the Government objects to the admissibility of the complaint. It argues in particular that UWE is a network of federations whose objectives are to deal with issues concerning the academic life of women. UWE justifies its competences referring to the statutes of the International Federation of University Women (IFUW), which since 2015 has become Graduate Women University (GWU). The Government considers therefore that UWE's competence in the field of the pay gap between men and women is not proven. Moreover, the Government considers the complaint very vague, general and not sufficiently grounded. Finally, the Government underlines that the complaint seems to be an alternative rather than a complement to the reporting procedure. As complaints have been lodged against all other 14 States Parties having accepted the complaints procedure, according to the Government it is difficult to establish whether UWE's goal is to defend all women in Europe. For these reasons, the complaint appears to be more of a political manifesto than a legal complaint.

3. In its response to the Government's objections, UWE states that it is on the list of organisations which can lodge a complaint before the Committee, including on discrimination issues in the labour market field. UWE further refers to the Statutes of IFUW. UWE states that the complaint addresses the situation in Finland, by referring to legislation and reports concerning Finland, which point to violations as regards the pay gap between men and women, the absence of implementation of adequate mechanisms and the lack of measures ensuring a balanced representation of women in administration boards of private enterprises. The complaint therefore specifically addresses Finland and assesses the wage inequality between men and women from a legal perspective, based on legal and factual elements, and it is not a political manifesto.

4. In its additional observations, the Government acknowledges that IFUW's Statutes and Constitution are joined to the complaint, but states that IFUW is not included on the list of organisations with competence to lodge a complaint before the Committee. IFUW's statutes cannot be considered as having any relevance for UWE's competence and are not useful for the assessment of the admissibility of the complaint. Moreover, UWE's Statutes simply states that UWE is part of IFUW, but this does not have any bearing on UWE's competence.

THE LAW

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Finland on 17 July 1998 and entered into force for this State on 1 September 1998, the complaint has been submitted in writing and concerns Articles 1, 4, in particular 4§3, and 20 of the Charter, provisions accepted by Finland when it ratified the Charter on 21 June 2002, as well as Article E. Finland is bound by these provisions since the entry into force of the treaty in its respect on 1 August 2002. The Committee observes that UWE also refers to the 1961 Charter and to Article 1 of the 1988 Additional Protocol, as well as to all paragraphs of Article 4 of the Charter. However, Finland has only accepted paragraphs 2, 3 and 5 of Article 4. The Committee recalls that only the accepted provisions of the Charter are applicable.

6. The Government raises several objections concerning the grounds of the complaint, notably that the complaint is very vague, general and not substantiated enough.

7. As regards the first ground, concerning the pay gap between men and women for equal, similar or comparable work, UWE alleges specifically the violation by Finland of Article 4§3 and Article 20 of the Charter. Article 4§3 guarantees of men and women workers to equal pay for work of equal value. Article 20 of the Charter also concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in Finland unequal pay is a reality, despite the international obligations entered into and the legislation enacted by Finland in this area. Concerning the practice of national bodies, UWE alleges in particular that the Ombudsman and the labour inspectorate are not able to fight efficiently against wage discrimination between men and women. These bodies have not removed existing obstacles to lodging complaints relating to discrimination on grounds of unequal pay for equal, similar or comparable work between men and woman.

8. As regards the second ground, concerning the representation of women in decision-making positions in private companies, UWE invokes relevant national legislation and, in support of the allegation that these provisions are not applied in practice, also refers to statistical data reported by European and national sources concerning the performance of Finland in this area. The Committee recalls that the right to equal opportunities is guaranteed by Article 20 of the Charter.

9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the Charter accepted by Finland. The Committee further observes that UWE has indicated in what respect it considers that Finland has not ensured the satisfactory application of such provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, *European Federation of Employees in Public Services (EUROFEDOP) v. Italy*, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.

10. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, UWE is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of international non-governmental organisations entitled to lodge complaints before the Committee.

11. As regards the particular competence of UWE in the area of the complaint, the Committee notes that, according to Article 2 of its Statute, the social objective of UWE is:

“(a) to promote action consistent with the purpose of IFUW [International Federation of University Women] by encouraging cooperation between its European members at various levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the programme of IFUW,

(b) to participate in the progressive development of European Civil Society, by working to achieve the programmes of the Council of Europe and the European Women's Lobby and other European governmental and non-governmental organisations as is deemed appropriate by the aims and programmes of UWE,

(c) to promote lifelong education, especially for women and girls.”

12. The Committee considers that these activities fall within the context of actions in favour of gender equality, one of the fundamental criteria of democracy (Recommendation Rec(1998)14 of the Committee of Ministers to member States on gender mainstreaming, adopted on 7 October 1988 at the 643rd meeting of the Ministers' Deputies). Wage equality for equal work is one of its pillars as well as a major societal challenge. Taking into account the broad scope of UWE's activities, which are developed in the framework of equality of rights and non-discrimination, the Committee considers that the condition concerning the competence of UWE is fulfilled for the purpose of the instant complaint and rejects the objection of the Government on this point.

13. Finally, the complaint filed on behalf of UWE is signed by Ms Anne Nègre, a lawyer who, according to the mandate signed by Ms Edith Lommerse, President of UWE, and by Ms Roxana Elena Petrescu, General Secretary of UWE, is authorised to lodge a complaint against the 15 States Parties on behalf of UWE. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

14. For these reasons, on the basis of the report presented by Giuseppe PALMISANO, and without prejudice to its decision on the merits of the complaint, the Committee

DECLARES THE COMPLAINT ADMISSIBLE IN RESPECT OF ARTICLES 1, 4§2, 4§3, 4§5, 20 AND E OF THE CHARTER

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 13 October 2017.

Invites the complainant organisation to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 13 October 2017, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 13 October 2017.



Giuseppe PALMISANO
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary