

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



15 November 2016

Case Document No. 1

University Women of Europe (UWE) v. Bulgaria
Complaint No 125/2016

COMPLAINT

Registered at the Secretariat on 24 August 2016

**COMPLAINT OF A VIOLATION
OF THE REVISED EUROPEAN SOCIAL CHARTER**

SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

I. THE PARTIES

THE APPLICANT ORGANISATION

UNIVERSITY WOMEN OF EUROPE, UWE
GROUPE EUROPEEN DES FEMMES DIPLOMEES DES UNIVERSITES, GEFDU
International non-governmental organisation holding participatory status with the Council of Europe,
whose official headquarters are located at 10 Chemin du Lac, 1207, Geneva, Swiss Confederation, and whose administrative office and postal address are located at Rangeerderstraat 1, 1019 TN Amsterdam, the Netherlands,
in the person of Edith Lommerse, President, employed in this capacity at these headquarters,

Represented by Anne Nègre, member of the Versailles Bar,
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THE HIGH CONTRACTING PARTY

BULGARIA

II. BACKGROUND TO THE COMPLAINT AND THE FACTS OF THE CASE

What is the actual situation of women in Europe today? Equality is still a dream for European women such as Sixtine, Victoria, Alexandra, Erin, Ines, Rafaella, Josepha, Sarah, Jana, Aurelia, Clara, Anna, Lea, Margaux, Wilhemine, Aurora and Europa.

Europa's parents dreamt of having a boy. She is lucky to have been born and not to be the second or third child her parents expected, as it is still common for female foetuses to be eliminated in many European countries (Report No. 506 by the French National Institute of Demographic Studies (INED) *Masculinisation des naissances* (The increasing proportion of male births), p. 39).

Her very first toys and books with their pictures of stereotypical sexist behaviour already indicate the submissive role she is expected to play vis-à-vis her father and her future "prince charming". And this will continue, as the history we are taught still neglects women as much as ever. Have history books, for instance, been changed to reflect the leading role played by women over the centuries? History has always been a "profession for men, who write the history of men, which they present as being universal". Yet, as Georges Duby and Michelle Perrot, member of the French women graduates' association AFFDU, remind us in their collective work *l'Histoire des femmes en Occident (The History of Women in the West)* (4 volumes, éditions Perrin, 2002), this supposedly universal account is only "half-universal".

As a teenager Europa is brilliant; she continues into post-secondary education but is not encouraged to study sciences, but advised to prepare for a profession without any responsibility or need to take decisions. Nevertheless, she continues to post-graduate level where she meets a number of wonderful teachers but also others who belittle her, and she encounters the same sexist attitude that she has encountered among students, men in the street and in sports. She wants to continue her research into women's rights but she is discouraged from doing so – it would not lead to a fine university career as there are virtually no professorships in this field.

Of course she naively believes that she can have a child when she wants, if she wants and that she will be entitled to reproductive rights and be free to choose to abort if she wishes, but her country, like others, is renegeing on established rights that were once taken for granted. She returns to work after her maternity leave but she will be dismissed very shortly after the protected period, assuming that her country actually has such a period. However, of course, whereas a child is the product of sexual intercourse between a man and a woman, the woman has to bear all the responsibility. When will there also be research into effective forms of male contraception and medicines to treat women specifically in addition to the huge array that have already been developed to treat men?

Europa gets married and her husband turns out to be violent – he beats her. It is no consolation to know that every three days a woman is the victim of a femicide and that – according to French figures – there are at least 6 000 deaths of this type every year in Europe, in other words the elimination of the total population of Australia in the space of one hundred years. So Europa decides she has to do something. It is difficult for her to gain access to the courts as she has no money of her own because she has given up working because there were no nurseries with suitable opening times to allow her to combine her professional and working life. The book "*Le temps des villes*", however, suggests useful work that can be done at local and regional level. Her witnesses are vilified in court and the judges refuse to accept her evidence. Europa realises that the judges in her case are unaware of their own ignorance.

Where is she going to live with her daughters? In the end she is convicted of false accusations and her husband is delighted. Bravely she appeals against the judgment but she loses.

She reads the reports of the Council of Europe Commissioner for Human Rights, whose title in French, Commissaire aux Droits de l'Homme, translates literally as Commissioner for the Rights of Man¹, she calls for the application of the European Convention on Human Rights (in French, Droits de l'Homme), and she places her hopes in the European Court of Human Rights (in French, Droits de l'Homme). She seeks application of Article 3 of the Istanbul Convention, stipulating that: “violence against women is understood as a violation of human rights” but again the French here is “droits de l’homme” – the rights of man. Europa realises that she is being beaten by her husband under the auspices of the rights of man!

Europa understands that even languages are against her. The question is whether the linguistic formulas which embody female submission and patriarchy are being changed, and the answer alas is no, such advances are constantly being rejected with absolutely no justification. In France, the Académie Française took part in a process of increasing use of masculine forms in the French language in the 17th century, as a result of which “*les jours et les nuits étaient belles*” became “*les jours et les nuits étaient beaux*”. Similar processes took place during the French Revolution and the same pattern can be identified in other European languages, reflecting a human construct at a certain period in history. It is a known fact that, at that time, human rights were devised and implemented not in a universalist form but for men alone, excluding women from the enjoyment of rights and citizenship and from public life on a long-term basis.

Why are steps not taken immediately to change European languages which discriminate against women? It would be enough to add the word “femme” (woman) to these terms and titles in French to make them respectful of women at last, and not discriminatory, as French currently is despite its being an official language of the Council of Europe. In French this would give us the following:

- “Droits de l’homme et de la Femme” – literally “the Rights of Man and Woman”
- “Convention Européenne des Droits de l’Homme et de la Femme” – “European Convention on the Rights of Man and Woman”
- “Cour Européenne des Droits de l’Homme et de la Femme” – “European Court of the Rights of Man and Woman”
- “Commissaire aux droits de l’Homme et de la Femme du CoE” – “Council of Europe Commissioner for the Rights of Man and Woman”, or failing that, a Commissioner for Women’s Rights would be welcome.

Is it just a question of language or is it also one of power, of keeping women in subordination to their families and their employers, and to a paternalist, patriarchal view of submission?

¹ Translator’s note:

In the original French, each time there is a reference to “droits de l’homme” the author adds “men’s rights en anglais”. This is not correct even as a literal translation. The correct translation of “droits de l’homme” is “human rights” and a more accurate literal translation would be the “rights of man” (which may be perceived as highlighting a linguistic bias towards men). This therefore is the expression I have used in this initial explanation, while opting simply to add “in French, droits de l’homme” elsewhere in the text.

Why does the Council of Europe not do anything about symbols, Europa asks. Why are there no statues of women in the gallery around the Assembly Chamber? Could anything be more symbolic of all-pervasive inequality?

Europa hopes that the Council of Europe will adopt a specific instrument entitled the “most favoured European women clause”, the aim of which would be the upwards harmonisation of women’s rights, arriving at a uniform status and protecting them from current regressions. This status would be devised with reference to the legislation of the 47 member states, taking up the most advanced laws for women and encouraging or obliging other countries to incorporate them into their legislation.

Very few women in Europe have as perfect a command of information-processing and digital tools as Europa; she looks for comparative European data produced by the Council of Europe and beyond, but the main source of her knowledge, member states’ laws, are not all available in English or French. Europa is kept at a distance by these institutions, which are supposed to serve the citizens; she calls on them for help but cannot obtain the information she requires. Public money is used to finance these national, European and international institutions, which have grown considerably in recent years, to the detriment of civil society.

Anything other than parity is unthinkable for Europa. 50% is the only acceptable quota, for that is what equal means, but this is far from what is being recommended with regard to female representation on company boards, in public services and in all decision-making forums including parliaments, and governments, or even at the Council of Europe. And what of the strategies deployed by political parties to get round the rules, or the penalties that they are prepared to pay rather than applying a law that their own members and MPs voted in? The laws and their spirit are not respected.

She starts her career in a private company at the same level as her fellow students but she is soon refused one promotion, then another, and the reinforced concrete ceilings pile up above her. She works on average two months per year free of charge in the same employment as a man and everybody thinks this is perfectly normal. She and her like have been despoiled for generations and generations. Overwhelmingly, in the past, women always contributed to the economy without being paid, then they were paid but only very little, and now they still have to put up with the persistent inequality of being paid a lower wage than men for identical, comparable or similar work. The impact that this has on pensions is obvious and, with their lower living standards and more difficult lives, women are still the most vulnerable persons in all sectors, remaining poorer, more isolated and more abused than anyone else. Because they have less borrowing potential, they generate fewer innovations, are less independent than they hoped, earn less money than they could and have less power in most workplaces.

According to the WTO, 99% of world trade is conducted by male company managers and only 1% by females, who are also only responsible for only 3.9% of public procurement contracts (Doc. 11). The allocation of the world’s wealth is just as shocking. In not a single country is public money assigned as a priority to these gender issues.

Pay disparities between women and men for equal, similar or comparable work are a fact of life in Bulgaria, in breach of the European Social Charter (hereinafter “the Social Charter”). The Committee must do justice to women and find against Bulgaria.

III. ADMISSIBILITY

3.1. On the holder of the right to a complaint

On 7 May 1992, Bulgaria joined the Council of Europe as its 26th member. The Council of Europe's budget for 2016 is €442 255 900, and Bulgaria's contribution is €1 157 481 (Doc. 37; <http://www.coe.int/en/web/portal/bulgaria>).

The revised Social Charter of 3 May 1996 came into force on 1 July 1999 (Doc. 63) and Bulgaria signed it on 21 September 1998. It was adopted by the Bulgarian National Assembly on 29 March 2000 and ratified by Bulgaria on 7 June 2000.

Its purpose is to secure the economic and social rights of European citizens of both sexes. Through the same law, Bulgaria ratified the Additional Protocol of 9 November 1995 authorising collective complaints under the conditions set by Articles 1 et seq. on 7 June 2000, with effect on 1 August 2000 (Doc. 62). . The aim of this protocol is to enhance supervision of member states through a mechanism which is intended to be more effective than the mere annual reports which are submitted by member states without adversarial proceedings.

The right to lodge collective complaints is enjoyed in particular by international non-governmental organisations (INGOs) holding consultative status with the Council of Europe and entered on a special list (Article 1 b of the Additional Protocol of 9 November 1995, Doc. 62).

Article 3 of the Additional Protocol provides that “*the international non-governmental organisations and the national non-governmental organisations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence*”. This competence is assessed by looking at the aims set out in the organisation's statutes.

In addition, Articles 22, 23 and 24 of the Rules of the European Committee of Social Rights adopted on 29 March 2004 and revised on 12 May 2005 state that complaints must be addressed to the Executive Secretary acting on behalf of the Secretary General of the Council of Europe. It is specified that they must be drafted in one of the official languages of the Council of Europe, and French is one of these official languages. Complaints must also be signed by the person(s) with the authority to represent the complainant organisation.

Furthermore, with regard to applications for compensation, the European Committee of Social Rights has consistently taken the view in its decisions that while “the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints ..., it does consider that as a consequence of the quasi-judicial nature of the proceedings under the Protocol, in case of a finding of a violation of the Social Charter, the defending State should meet at least some of the costs incurred” (decision of 12 October 2004 on Collective Complaint No. 16/2003).

In the current case, University Women of Europe (UWE) is an international non-governmental organisation set up on 28 November 1981 (Docs. 1 and 2) and was granted participatory status with the Council of Europe on 18 August 1983 under the number 5103 (Doc.3). As a result, it is a member of the Council of Europe Conference of INGOs.

At its meeting of 5-9 October 2015, the Governmental Committee of the European Social Charter and the European Code of Social Security authorised UWE to submit collective complaints in the event of violations of the Social Charter for a four-year period beginning on 1 January 2016 (Docs. 4 and 5).

UWE mostly comprises the European associations affiliated to Graduate Women International (GWI), which is the successor in title of the International Federation of University Women (IFUW), founded in 1919, and which has accreditation with various UN agencies. The IFUW was renamed GWI in 2015.

According to Article 2 of the Constitution of UWE, its purpose is as follows:

- “(a) to promote action consistent with the purpose of IFUW 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.”*

Article 3 of the Constitution provides as follows:

- “1. The legal seat of UWE/GEF DU shall be that of IFUW.*
- 2. Should the seat of IFUW be moved outside Europe, the seat of UWE/GEF DU and the place of that seat shall be determined by the Assembly.*
- 3. The location of the Head Office shall be determined by the President.”*

The legal seat (or headquarters) of GWI, successor in title to IFUW, is located at 10 Chemin du Lac, 1207, Geneva, Swiss Confederation, www.graduatewomen.org/.

This address is also the headquarters of UWE but its administrative office and postal address are located at Rangeerderstraat 1, 1019 TN Amsterdam, the Netherlands; e-mail: boarduwe@gmail.com; website: <http://www.uweboard.wordpress.com>.

The UWE member associations or federations referred to in Article 4 of the UWE Constitution are from the following countries: Germany, Austria, Bulgaria, Cyprus, Croatia, Scotland, Spain, Estonia, Finland, France, Italy, Ireland, Moldova, Norway, the Netherlands, Romania, the United Kingdom, Slovenia, Switzerland and Turkey.

Under Article 12 of the Constitution, the Board comprises five persons of at least three different nationalities, namely a President, two Vice-Presidents, a Secretary and a Treasurer,

elected for a three-year term, renewable once (Article 13). Article 8 of the Constitution requires a general meeting to be held once a year and this is indeed the case.

At the general meeting held in Utrecht, in the Netherlands, on 29 August 2015, Edith Lommerse, Netherlands (Doc. 6) was re-elected as President for a three-year term, following on from her first term beginning in June 2013.

UWE President, Edith Lommerse, is a volunteer like all other UWE members. She was born on 5 March 1961 in Versailles, France, lives at Rangeerderstraat 1, 1019 TN Amsterdam, Netherlands, and is a Dutch national. Currently, Edith Lommerse is employed as an advisor to the Dutch police.

In 2016 the Board members are as follows:

- Two Vice-Presidents: Isabelle Trimaille, France, and Elena Flavia Castagnino, Italy,
- Secretary: Roxana Petrescu, Romania.

Attention should also be drawn to Article 18 of the UWE Constitution, which states that “*the Assembly will be represented in legal actions both as plaintiff and as defendant by the president and one member of the Board designated to that effect by the Assembly*”.

The instructions enclosed herewith, as issued to Ms Anne Nègre, member of the Versailles Bar, have been duly signed by the UWE President, Edith Lommerse, and its Secretary, Roxana Petrescu, in accordance with the organisation’s Constitution (Docs. 9/1 and 9/2).

3.2. UWE’s competence to submit a collective complaint

This movement, bringing together women with at least three years in higher education, was founded in 1919. The European members wished to found a “regional” group and decided to set up UWE.

GWJ and then, from its establishment onwards, UWE, have been active in every campaign for gender equality in all areas, including securing the right to vote and stand in elections, launching the idea of parity and negotiating it, making women more independent, education for girls, life-long learning for women, increasing the role of women in decision-making, representation of women on company boards, combating violence against women, contraception and sexual freedom, inequalities in marriage contracts, equal inheritance rights, parentage issues and the place of women in schools and university and the sciences and other fields, considering that education is the key providing access to these.

Women from this movement are members of INGO delegations at UN agencies in New York, Vienna, Paris and Geneva, where they take part in meetings and contribute their expert opinions to bodies such as the Commission on the Status of Women, ECOSOC and UNESCO, and at all the European institutions including the European Union and the Council of Europe.

Members attended the International Conferences on the Status of Women held in Mexico in 1975, Copenhagen in 1980, Nairobi in 1985 and Beijing in 1995, where they also held workshops. The Beijing Platform for Action was adopted by the governments present

including that of Bulgaria and called for society as a whole to be re-assessed from a gender perspective.

Affiliates of UWE or GWI such as the state-approved French Association of Women Graduates, AFFDU, founded in 1920, which is located at 4 rue de Chevreuse, 75006 Paris, and is the French branch of GWI, which was formerly IFUW, have had highly distinguished members including the two-time winner of the Nobel Prize for Physics, Marie Curie, and her daughter, Irène Joliot-Curie, who also won the Nobel Prize for Physics.

In other countries, members have included:

- Barbara McClintock, winner of the Nobel Prize for Medicine;
- Wangari Maathai, Nobel Peace Prize winner;
- Mary Robinson and Micheline Calmy-Rey, heads of state;
- Barbara Prammer, first woman president of the lower house of the Austrian parliament;
- Jeanne Chaton, an AFFDU member who played an active part in drafting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (as reflected in the collective work edited by Diane Roman, “*La Convention pour l’Elimination des Discriminations à l’égard des Femmes*”, published by Editions A. Pedone, France, 2014)
- Françoise Gaspard, former Vice-Chairperson of the CEDAW and member of the AFFDU and hence of UWE
- Hillary Clinton, who was a member of the affiliate American association in Arkansas.

The women of this movement have taken an active role in the history of gender equality in Europe and the world, often courageously, and often for no financial reward. If any organisation has the competence and legitimacy to submit this complaint it is UWE.

UWE notes that while substantial efforts have been made through various treaties, conventions and charters including the Social Charter, to improve the laws and regulations of the Council of Europe member states including Bulgaria on gender equality, **de facto equality does not exist anywhere.**

UWE believes that equal pay for women and men for equal, similar or comparable work is a prerequisite for democratic justice. Fifteen of the countries which have ratified the Social Charter also authorise INGOs to submit collective complaints on this point. UWE has decided to submit 15 collective complaints in order to make equal pay for equal, similar or comparable work between women and men an everyday reality for the women of these 15 countries, and in the hope that there will be an awakening in the other 32 Council of Europe member states.

3.3. UWE’s right to lodge a collective complaint against Bulgaria

At its general meeting in Utrecht, Netherlands, on 29 August 2015, UWE adopted the following two resolutions (p.7):

- To seek authorisation to lodge a collective complaint under the Social Charter
- To lodge a collective complaint under the Social Charter.

A reminder of these resolutions figured in the report of the latest UWE general meeting held in Winchester on 26 June 2016 (Doc. 8) and those attending the general meeting were informed of the action taken on the decision to lodge collective complaints.

Pursuant to these resolutions, UWE sought authorisation from the European Social Charter Department and the Council of Europe to lodge collective complaints (Docs. 4 and 5). It also asserted its competence on this occasion and it does not seem possible now for this to be called into question. It has authorisation in this respect because it figures on the list of INGOs authorised by the Governmental Committee of the European Social Charter and European Code of Social Security on 1 July 2016, CG(2016)13. The period of four years runs from 1 January 2016 (Doc. 9).

It is under these conditions that UWE is competent and qualified to lodge a collective complaint against the fifteen countries authorising collective complaints procedures, including Bulgaria.

IV. THE VIOLATIONS OF THE CHARTER

4.1. The violated articles of the Social Charter and the subsequent related texts

Article 4 of the 1995 Protocol provides that a complaint must “relate to a provision of the Social Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision”.

The spirit and the letter of the Social Charter require equal treatment of women and men by the member states, enabling equal pay for equal, similar or comparable work between women and men to be secured at last.

The aim of the Social Charter is to guarantee European citizens’ economic and social rights. In its Preamble already, it states as follows: “Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin”. Article 1 states that “All workers have the right to just conditions of work”.

Article 1 of the Additional Protocol of 1988, on the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex is binding on states which have ratified it. It establishes that all workers have this right (Doc. 61, Part 1, § 1) and confirms this in Article 1§1 in 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:

– access to employment, protection against dismissal and occupational resettlement;

- *vocational guidance, training, retraining and rehabilitation;*
- *terms of employment and working conditions including remuneration;*
- *career development including promotion.*”

The revised Social Charter comprises key articles to promote respect for the principle of equal pay for equal work:

- Article 4§3 states as follows: “*With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake ... to recognise the right of men and women workers to equal pay for work of equal value*”. The concept of work of equal value is confirmed by this.
- Article 20 states as follows: “*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*”.

This right is acknowledged, but not just in theory. It must also apply in practice and unless it does so, the Social Charter is violated.

- Article E of Part V on “Non-discrimination” states as follows: “*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*”.

Taken together, these provisions make it essential to establish full equality of treatment between women and men with regard to pay for equal, similar or comparable work.

No collective complaint has yet been lodged on this subject.

All that has been established is the Committee’s position on the effectiveness of Charter rights, which has been regularly reiterated in the following terms:

*“However, the Committee notes that the rights recognised in the Social Charter **must take a practical and effective, rather than purely theoretical, form** (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This means that, for the situation to be in conformity with the treaty, states party must:*

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;*

b. maintain meaningful statistics on needs, resources and results;

c. undertake regular reviews of the impact of the strategies adopted;

d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable” (Collective Complaint No. 33/2006, decision on the merits of 5 December 2007).

It is clear from the findings of the Committee itself, in its publication “European Committee of Social Rights Conclusions in a Nutshell, 2012-2015” (Doc. 38) that efforts have to be made in the area of labour law in all countries. Over the period from 2009 to 2012, 724 situations were examined and 35% gave rise to conclusions of non-conformity while 19% were deferred because of a lack of information.

The relevant laws are out-dated and have no effect in any of the countries which have ratified the Social Charter and the subsequent related texts. It is precisely this matter of the effectiveness of the Social Charter and the related texts which is at stake here because it deprives half of Europe’s population, namely its women, of equal pay for equal or similar work and saddles them with the numerous consequences of this situation.

Invisible, universal democracy is showing its flaws. If nothing must differentiate between women and men in law, this will systematically be to the detriment of women, amounting to a form of selective democracy. Inequalities must be visibly denounced to be combatted effectively. They must be identified and pinpointed so that they cannot be missed.

Then there is the notion of discrimination, a word which comes from the Latin “discrimen”, which means “dividing line”. “To discriminate” is understood to mean “to separate while judging” whereas “to exclude” is synonymous with “to place outside”. In the process of discrimination, we remain within one and the same space – we are included. It is in this inclusive space that there is discrimination.

When a person is discriminated against on recruitment or in the workplace, the person is already operating within the labour market or a company. For instance, instead of being completely excluded from the world of work as they were for so long, persons with disabilities are now discriminated against. Discrimination begins where exclusion ends. These notions help us to gain a better understanding of the development of inequalities and the extent to which they are entrenched within our societies. While combatting them is something which states cite as a democratic requirement, it is about time that the theory became an everyday reality for the women citizens of the world, particularly the European ones.

There are two means by which the implementation of the Social Charter and the subsequent related texts are monitored:

- **The reports which states produce themselves**, although these are not established through an adversarial procedure, meaning that there is room for interpretation on the part of the authors or they can highlight certain facts more than others.

Bulgaria has submitted many reports to the Committee and, in its conclusions on Bulgaria's 14th report, of 7 January 2016, it notes that Bulgaria fails to comply with Article 20 of the Charter. It also criticises Bulgaria for the inequality between women and men with regard to equal pay for equal or similar work (Doc. 46). Similar comments were also made in the Committee's Conclusions 2015, published in January 2016 (Doc. 47).

Inequalities clearly follow on from one another in a chain because, in addition to their unequal working conditions, their responsibilities with regard to child-rearing and care for the elderly, the difficulty of reconciling family life and work, and the lower pay they receive in all areas for equivalent work, whether in the public or private sector or on the boards of major companies, women still occupy less high-ranking posts than men in private and public-sector employment and in elected posts. Under these circumstances, how can they still have time or money to devote to voluntary activities? Something has to be sacrificed on one side or the other.

The facts show, however, that there is a consistent serious violation as regards women's pay throughout their professional lives both in the private and in the public sector. For their rights to be applied tangibly and effectively and not just in theory, it is not enough to have a legal arsenal if the state does not provide the means to put this arsenal into practice, in other words converting it into actual equal pay for equal, similar or comparable work for women and men. There has been more than enough time to achieve this since 1948 and the adoption of the Universal Declaration of Human Rights (in French, "Droits de l'Homme").

- **The other means of supervision is the collective complaints procedure**, which is restricted to the fifteen countries which have accepted it. It can be noted that to date, unless we are mistaken, there has never been a case in which fifteen complaints have been lodged against these fifteen countries simultaneously for the same violation.

The purpose of collective complaints is to give substance to international and European standards. Citizens are assigned rights by a huge array of international, European and national texts, but they are not applied in practice. Imposing an obligation of means on states without instilling any real political desire to achieve results is totally insufficient, voiding national legislation and any international commitments entered into of any meaning. Yet, as will be shown below, this is precisely what has happened with the matter to which this collective complaint relates – the texts have piled up, added up, been amended and duplicated one another without having any effect.

In various cases, the Committee has stated that while it bases its assessment of the conformity of national legislation with the Social Charter and the subsequent related texts on states' domestic law and practice, it judges the actual circumstances in the country on the basis of the arrangements made for the implementation of the Social Charter and the appropriateness of these measures on the basis of their effectiveness (ECSR, [World Organisation Against Torture v. Portugal](#), 5 December 2006, Complaint No. 34/2006; ECSR, [International Movement ATD Fourth World v. France](#), 5 December 2007, Complaint No. 33/2006; ECSR, [European Federation of National Organisations Working with the Homeless, FEANTSA v. France](#), 5 December 2007).

The actual implementation of the legislation is key as the aim is indeed to protect tangible rights, not just theoretical ones.

However, no collective complaint has yet highlighted the violation of the Social Charter with regard to equal pay for equal, comparable or similar work despite the fact it is one of the most obvious and common infringements of human rights (in French, “droits de l’homme”).

Bulgaria has undertaken to put the right to equal pay for women and men for equal, similar or comparable work into practice and to make it effective. In failing to meet this obligation, it infringes the provisions of the Social Charter and the subsequent related texts, which require this equality.

UWE fulfils the requirements to lodge a collective complaint against Bulgaria alleging a violation of the Social Charter and the revised Social Charter, particularly Articles 4§3, 20 and E, and the Protocol of 5 May 1988, and its action is well-founded.

4.2. The main international texts signed and ratified by Bulgaria

Doc. 64 The UN’s Universal Declaration of Human Rights of 1948, Article 1 of which provides as follows:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”;

and Article 7 of which states:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

✓ Article 1 of the ILO Equal Remuneration Convention (No. 100) of 1951, which states as follows (Doc. 66):

“For the purpose of this Convention--

- (a) the term **remuneration** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term **equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex**”.

✓ Doc. 68 ILO Conventions Nos. 111 and 100 (referred to above), both of which apply to Bulgaria (Doc. 68, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102576)

A non-exhaustive list of clear and detailed legal provisions can be drawn up, but given the end product none of them appear to be properly applied in the country:

✓ Doc. 65 The European Convention on Human Rights, which was adopted on 4 November 1950 and came into force on 3 September 1953, and Article 14 of which prohibits discrimination of any kind.

✓ Doc. 67 The Treaty of Rome of 25 March 1957, which required the six founding member states to achieve certain objectives before passing on to the next stage (Treaty of Rome, Article 8§3) – a requirement which was not satisfied because the objective of equal treatment of women and men was not achieved (<http://mjp.univperp.fr/europe/1957rome3.htm>). On joining the European Union, Bulgaria adopted its texts.

Equal treatment of women and men with regard to pay is provided for in Article 119 of the Treaty of Rome, which states as follows:

“Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

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”.

This is the only objective which was not achieved before passing on to the next stage and it has still not been achieved in 2016, 59 years later.

✓ Doc. 70 And, of course, Article 157 of the Treaty on the Functioning of the European Union, under which each member state must ensure that the principle of equal pay for equal work or work of equal value is applied. This is not the case in Bulgaria.

✓ Docs. 71 and 71/1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the General Assembly of the United Nations on 18 December 1979 and came into force on 3 September 1981 and an optional protocol thereto, which was signed on 6 October 1999 and came into force on 22 December 2000. Bulgaria signed the Convention on 17 July 1980 and ratified it on 8 February 1982, then ratified the optional protocol on 20 September 2006 (Docs. 71 and 71/1).

Article 11 of the CEDAW states: *“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

...

It continues in its § (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work”.

✓ Doc. 71/2 The Vienna Declaration, which was adopted following an international conference, stated that the universal nature of human rights (in French, “droits de l’homme”) meant that they should also cover women’s rights – as is also the case with the social rights set out in the Social Charter, which specifically refers to women’s rights. It is enough to read this Declaration to see that women’s rights were something that was constructed alongside human rights, or the rights of man (in French, “droits de l’homme”), in a world made by and for men.

✓

✓ The Charter of Fundamental Rights of the European Union, adopted on 7 December 2000

✓ Doc. 72. The Treaty of Lisbon, signed on 13 December 2007 and in force since 1 December 2009. Article 1 bis of this treaty lists equality between women and men as one of the values of the European Union. In the initial draft of this text it was proposed that equality should merely be one of the objectives to be achieved under Article 101. This essential amendment was brought about by women’s associations including the AFFDU and hence UWE in order to consolidate advances and prevent a regression in rights, which is always possible.

Other instruments which can be cited are:

- Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- Directive 2010/41/EU of the European Parliament and the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity
- Commission Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency. However, this recommendation, like many others, was not acted upon despite the international undertakings made.

Women have always benefited from the advances of European legislation and this has been an immense step forward for them, especially as these laws take a neutral stance in relation to religion. However, the major problem is their application.

Why sign texts, ratify them and not apply them consistently?

In this body of law, equal pay for women and men is seen as the general corollary of the principles of non-discrimination and equality. However, in the world of work, this actually translates into unequal pay for women and men for equal, similar or comparable work, curbs on career progression and an impact on pensions, to name but a few of the effects. Evidence for these pay gaps is provided in numerous studies, which will be dealt with in more detail below.

Each year a review of European law on gender equality outlines changes in legislation and some of the case law of the CJEU and the European Court of Human Rights in this area. Of course, the generally positive reports submitted by states to the Committee hardly contain any criticism on the subject of equal pay for equal or similar work.

The demand for this equality was already there in 1957 when the Treaty of Rome (Doc. 67) was adopted. Why did something so obvious have to be stated in a text? Never have women been respected, never have they been accorded any of the same rights as men spontaneously and the process of granting them all of these human rights (in French, “droits de l’homme”) has been extremely slow.

Will the European Committee of Social Rights at last do justice to women who are humiliated in every country, not just in Bulgaria, by being paid a lower amount than men for equal, comparable or similar work?

The Charter and the subsequent related texts require rights to be put into practice and made effective, not just a simple obligation of means. Bulgaria fails to meet this requirement and therefore the finding should be against it.

4.3. The main texts applicable in Bulgaria and their effectiveness

✓ Doc. 69 Article 6 of the Bulgarian Constitution establishes the principle of gender equality. Article 5 covers the CEDAW and effectively incorporates it into domestic legislation.

✓ Doc. 77 Law of 26 July 2012 amending and complementing the Law on protection against discrimination, BGR-2012-L-93726.

This law incorporates the principle of equal pay for work of equal value into domestic law, along with the prohibition of sexual harassment. In addition, Article 8 of the Labour Code prohibits any privilege, discrimination or restriction in connection with the exercise of labour rights and obligations on the grounds of nationality, origin, gender, sexual orientation, race, colour, age, political or religious convictions, affiliation to trade unions or other public organisations or movements, material or family circumstances, physical or mental disability or the length of employment contracts or working hours.

✓ Doc. 78 Law of 27 July 2010 ratifying the amendment to Article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, adopted on 22 May 1995. BGR-2010-L-87139.

✓ Law on protection against discrimination of January 2004

✓ Doc. 44 Law of 8 May 2003 establishing the institution of Ombudsman, published in Official Gazette No. 48 of 23 May 2003. Since a constitutional reform in 2006, this seems to have become a supreme, independent constitutional institution operating outside the hierarchy of the legislature, the executive or the judiciary.

✓ Doc. 76 Cabinet Decree No. 313 of 17 November 2004 on the establishment of a National Council for Gender Equality advising the Cabinet. BGR-2004-R-100749.

✓ Doc. 75 Decree No. 108 of 10 May 2014 amending Cabinet Decree No. 313 of 17 November 2004 on the establishment of a National Council for Gender Equality advising the

Cabinet. BGR-2014-R-100750.

✓ P. 73 Act of 24 September 2003 on protection against discrimination, as amended, BGR-2003-L-65214

✓ P. 74 Act of 2002 on equal opportunities for women and men. BGR-2002-L-74751

The National Council on Gender Equality is an advisory body which establishes the general thrust of gender equality policy in Bulgaria through annual national programmes to promote gender equality and related monitoring reports, albeit with hardly any information on equality issues on which to base its work, or financial or human resources. There are no formal institutional focal points for gender equality issues or key contact persons within ministries.

No resources are allocated for the supervision of gender mainstreaming activities by ministries, assuming that there are such activities. There does not appear to be any national co-ordinating body.

A National Strategy on Promotion of Gender Equality for 2009-2015 is being implemented and includes the planned gender mainstreaming activities, but nothing is yet known about the outcome, for although annual plans are published, there has not been a review of the strategy.

In 2000, the Ministry of Labour and Social Policy was designated as the institution in charge of devising, co-ordinating and implementing state gender equality policy. The Department of Equal Opportunities for Women and Men was set up within the Ministry of Labour at the beginning of 2004 and has expanded and evolved in the years since.

In 2005, a Commission for Protection against Discrimination was set up to act as the specialist state body for the implementation of gender equality and anti-discrimination policies.

Few gender mainstreaming methods such as consultations with the relevant players or gender-differentiated statistics seem to be used. It is planned to use evaluation, indicators and regulatory activities in the future. Funding for further training for public employees has been provided by external programmes such as MATRA and PROGRESS (Docs. 45 and 39).

It should also be noted that there is staff representation in the workplace.

Bulgaria is having to honour numerous obligations in difficult economic circumstances. (Doc. 38) However, complying with the Social Charter in terms of equal pay for women and men for equal, similar or comparable work is a factor for economic dynamism and a challenge which should be met, as will be shown below.

Bulgarian companies have very few elected workers' representatives and it is not known how many of these are women. The proportion of collective agreements varies according to the sector concerned, ranging from 10% in the tertiary sector through 40% in manufacturing to 90% in the public sector (Doc. 40). However companies do have to be a certain size for employee representation to be a requirement (Doc. 41/1) and there seems to be no pressure for a clear and effective policy to be set up in this area.

4.4. Equality monitoring bodies:

- **Ombudsman:** In 2003 Bulgaria set up the office of the Ombudsman: *“The Ombudsman’s task is to make use of all the means provided for by the law to defend citizens’ rights and freedoms when they are infringed or simply threatened by the actions or inaction of the state or municipal authorities or their administrative departments or by persons employed to provide public services. Ombudspersons act independently. They comply only with the Constitution, the law and the international agreements signed by Bulgaria. In so doing they follow their conscience and their moral code. They do not impose their decisions on other institutions. They may only issue decisions which repeal, amend or replace the acts of state authorities and local authorities. In a word, their power and their influence are both moral and political in nature.”* (Doc. 44)

The Ombudsman’s tasks are most certainly not confined to equality issues, but currently a woman, a former member of parliament, occupies the post. She has no training in these issues and does not seem to have been granted the means to act despite her clear determination to do so.

At local level, there are also an ombudsman in each of the larger municipalities. In Sofia, this is also a woman, who also has no specialisation in equality issues or specific training.

In practice, ombudspersons should be trained in equality issues if we hope to achieve progress (Doc. 40).

The way in which this institution is portrayed in the country concerned has little in common with the description in the report and opinion issued by Equinet (Docs. 13 and 13/1) and still less with the actual circumstances on the ground.

- **General Labour Inspectorate:** Bulgaria has a General Labour Inspectorate, which has access to the register of employment contracts and is managed by the government revenue office. Inspections should be arranged to achieve a specific goal such as checking that the principle of equal pay for women and men is applied, but this is a political choice which is not currently applied in Bulgaria.

In a growing number of cases, specific data on undeclared work are collected through the inspection process, then entered in the common labour inspectorate register. This process could cover pay equality issues but it does not appear to be the case at present.

Likewise, the Bulgarian General Labour Inspectorate carries out joint inspections with other public authorities such as the government revenue office, the employment office, the national social security institute, the national police force and the authorities in charge of migration. From 2007 to 2009, between 3 000 and 4 000 joint inspections were carried out, showing the potential to work in co-operation with other public authorities with responsibility for equality (Docs. 42 and 43).

In any company, not only is it unrealistic to ask employers for evidence of inequalities but it also leaves the door open to a hurried dismissal on other grounds. There is a clear culture of corporate secrecy. And this is not to mention the cost of complaint or appeal proceedings, the energy they require and the pressure they place women under. They raise so many difficulties

that a reasonable lawyer will not drag a woman employee into such proceedings unless her contract has already been, or is in the process of being, terminated.

There remains a final obstacle, which is the limitation period that applies in the area of pay disputes, which can be somewhat short when a woman has been discriminated against over a long career, meaning that any back pay will be limited. Therefore, embarking on such proceedings is an extremely hazardous process, producing a very uncertain result.

It should not be up to women employees to cover the cost of such proceedings out of their personal finances when they have been discriminated against throughout their careers in a country which fails to abide by its commitments on equal pay, refusing to adapt its procedures to take account of these flagrant inequalities, whether it be in companies, during inspections or at a later stage, in the courts.

4. 5. Representation of women in decision-making posts in private companies

There are no laws in Bulgaria which promote balanced access for women to company boards. Nor are there any quotas for candidatures for political offices (Doc. 24, pages 98 and 99). As a result, according to a study of January 2016 by the European Union on “Gender balance in corporate boards” (Doc. 30), the percentage of women on company boards is 22.7%, a figure confirmed by another European Union report (Doc. 30/1).

In the absence of any legal requirement in this respect, women are not found in any positions of power, such as the chairs of boards or executive committees.

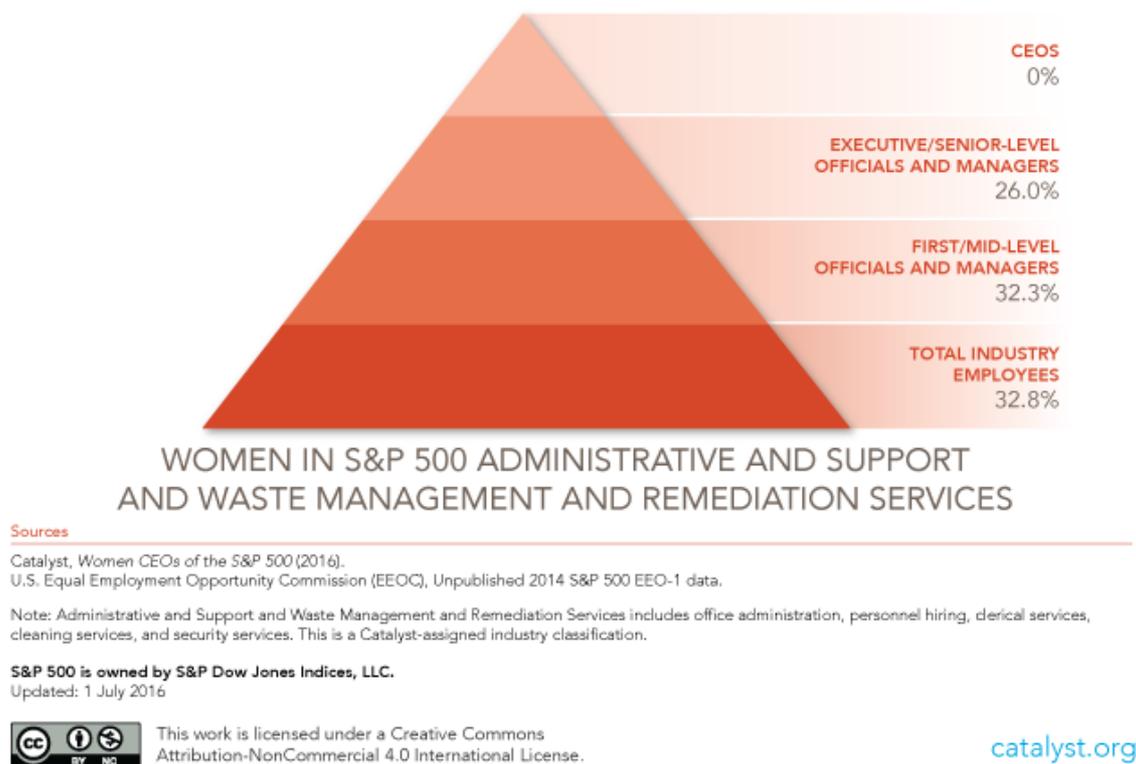
It is quite apparent that both company managers and political leaders hardly comply with the legislation on gender equality and certainly not with its spirit. Men simply share power among themselves (Doc. 48).

How can we get women’s careers to evolve and bring about clear change if there are so few women in decision-making posts, or even none at all?

As these leaders in Bulgaria and other European countries do not seem to know where to find women to sit on company boards, just as they found it hard in the past to find women to be included on electoral lists, we must take advantage of the initiative supported by Viviane Reding, the former Vice-President of the European Commission, as a result of which a list of 200 on-line CVs was expanded to a database of 8 000 of the world’s most highly-skilled women, hosted by the association Global Board Ready Women.

Yet in 2003, when one of the first surveys on the subject was conducted on 353 of the 500 American companies with the largest revenues listed by Fortune, the results showed that the financial performance of the companies with the most women managers was 37% higher than the others (P. 32, *The Bottom Line : Connecting Corporate Performance and Gender Diversity*, Catalyst ; <http://www.catalyst.org/knowledge/bottom-line-connecting-corporate->

performance-and-gender-diversity).



In 2007, a second study focused on women administrators. The 500 companies listed by Fortune were divided into four quarters according to the proportion of women on their boards and the quarter with the fewest women was compared with the one with the most.

The latter quarter's performance was 53% better than the former in terms of capital yield, 42% better in terms of sales margins and 66% better in terms of return on investments.

Studies conducted in Ireland and in France confirm that high rates of representation of women in management posts are very beneficial to companies. Women are increasingly taking up business tasks which were thought to be quintessentially male, and they are achieving far better results than expected, thus dispelling another misconception (Doc. 34 - Washington Post article, 24 September 2014).

In 2007, McKinsey published a report entitled "Women Matter – Gender diversity, a corporate performance driver" and here again, the authors were surprised at the obvious fact that women can improve performance. **This is a virtuous circle** (Doc. 33).

Parity, equality and diversity are challenges which cast doubt on companies' conventional operating methods but they always bring benefits.

Such strategies are necessary for a proper general understanding of the issue of unequal pay for equal work, inequality is present at all levels of society, from decision-making to the performance of the simplest of tasks.

It should be pointed out that the term "parity", as it is currently defined, emerged at the Council of Europe in 1989 following a seminar on "Parity democracy". It subsequently became one of the principles on which the functioning of democracy was based.

None of Bulgaria's economic analyses or national development plans treat this source of dynamism as a decisive factor for the future of the economy (Doc. 36). Indeed, many states still regard women's wages as a secondary income: "Consequently, this feature adds to inactivity and low wage traps for second earners, which are among the highest in the EU, and affect in particular women" (Doc. 36, page 52) or "shortages of affordable and quality childcare and out-of-school care [may] induce second income earners (often women) [to take parental leave or work part-time, with a negative impact on household income]".

These patriarchal interpretations are persistently and repeatedly used to undermine and stigmatise women's work whereas men's various unscheduled absences, which can seriously disrupt the running of companies, are never entered into the reckoning.

When will a figure be put on the remuneration that has not been paid to women in the sphere of jobs and the social care of children and the elderly (thus reducing their pension savings), so as to do them justice and change the perceptions of those who govern and decide while denying the obvious? **Bulgaria has made a political choice not to do justice to women.**

All of the foregoing should bear out the Committee's finding that Bulgaria does not comply with the Social Charter and the subsequent related texts.

4. 6. What is the actual situation in Bulgaria with regard to unequal pay for equal or similar work?

The Committee should refer to the following documents, all of which concur:

- ✓ Doc. 10 In its "introductory guide" to equal pay the ILO attempts to "*raise awareness and understanding of the principle of equal remuneration for work of equal value*" (page iv). It is pointed out that equal pay is a fundamental right under the various texts mentioned above (page 3). It is accepted that protection from racism is a fundamental right and that slavery is intolerable but the exploitation of women is hardly seen, hardly understood and hardly contested despite the fact that it is based on the same principle of domination and exploitation in all spheres including the financial one. The state has everything to gain from seeing to it that women are better paid, as they would be more financially independent and no longer depend on social assistance as many still do, while paying more taxes and receiving decent pensions.
- ✓ Doc. 11 On 8 March 2013, on the occasion of International Women's Day, the WTO noted that women's "*share of corporate procurement is estimated at less than 1%, and even in the US where there is a government-wide mandated procurement goal of 5%, in 2011 only 3.9 % of contracts were awarded to Women Business Enterprises*". This is clear evidence of the bad faith of states, especially that of Bulgaria, which could quite easily impose special criteria in this sphere, particularly with regard to public procurement. Tax incentives are also an option worth investigating.
- ✓ Doc. 12 On 5 February 2013, research workers from the University of Denver, USA, calculated that it would not be until 2085 that women would reach enough of the highest

positions to catch up with their male colleagues. The UN states that it will take the same time to achieve equal pay.

- ✓ Doc. 13 This report, on *“Equal pay for equal work and work of equal value : the experience of equality bodies”* would be enough in itself to prove that inequality exists and hence that the requirements of the Social Charter are being infringed. This is confirmed by a study of 2015 entitled *“The Persistence of Discrimination, Harassment and Inequality for Women”* (Docs. 13 and 13/1).
- ✓ P. 14 In 2014, the OECD report on *“Unpaid care work”* took a world view and highlighted the considerable amount of time that women spent on unpaid work and the pay disparities for women and men for equal or similar work. The 4 key messages which it elaborated upon were as follows:
 - *« Around the world, women spend two to ten times more time on unpaid care work than men.*
 - *This unequal distribution of caring responsibilities is linked to discriminatory social institutions and stereotypes on gender roles.*
 - *Gender inequality in unpaid care work is the missing link in the analysis of gender gaps in labour outcomes, such as labour force participation, wages and job quality*
 - *Tackling entrenched gender norms and stereotypes is a first step in redistributing responsibilities for care and housework between women and men ».*
- ✓ Doc. 15 According to the ILO’s Global Wage Report for 2014/2015, top-bottom inequality decreased between 2006 and 2010 in Bulgaria, which has a developed economy. Wage levels are important for the middle classes as a factor contributing to a country’s dynamism and development (pages 31, 32 and 35).

It is surprising to find that the gap between women and men is still growing in the highest pay brackets. However, discrimination against women is also still present in all areas:

“the bottom 10 per cent of women earned about €100 per month less than the bottom 10 per cent of men. Conversely, the top 10 per cent of high-earning women earned close to €700 per month less than the top 10 per cent of men”. A similar trend can be found in almost all of the 38 countries surveyed in this report.

The ILO calls on *“equal pay between men and women needs to be promoted, including by combatting gender-based stereotypes about women’s roles and aspirations, addressing gender bias in wage structures and wage-fixing institutions, advocating for an equal sharing of family responsibilities, and strengthening policies on maternity, paternity and parental leave”.*

“The report calls for legislation to provide the right to equal remuneration for work of equal value in line with the Equal Remuneration Convention, 1951 (No. 100) and judicial access to claim this right” (Doc. 15, page 2).

✓ Doc. 16 In 2014, an EU brochure on “Tackling the gender pay gap in the European Union” noted that the average pay gap between women and men was 16.4% in the EU and 14.7% in Bulgaria, while identifying certain obstacles that accounted for this and making proposals (Doc. 16, pages 10 and 11).

✓ Doc. 17 The Council of Europe proposes a Gender Equality Strategy for 2014-2017. This is an interesting strategy, which, having pointed to the democratic injustice of unequal wages for equal or similar work, focuses on five main objectives:

“1. combating gender stereotypes and sexism;

2. preventing and combating violence against women;

3. guaranteeing equal access of women to justice;

4. achieving balanced participation of women and men in political and public decision-making;

5. achieving gender mainstreaming in all policies and measures”.

✓ Doc. 18 In 2015 we were informed by the WTO that “trade in goods and services has fluctuated significantly over the last 20 years”, rising from USD 1 179 billion in 1995 to USD 4 872 billion in 2014 (Doc. 18, page 1). There is no lack of money therefore, so the question is why women are kept in submission. The European Union is the largest exporter among the world’s regional trade blocs (Doc. 18). It is therefore a political decision to deny women equality, including equal pay to men for equal, comparable or similar work.

✓ Doc. 19 An issue briefing entitled “Wealth: Having it all and wanting more” published by Oxfam on 19 January 2015 (<http://oxf.am/ZiWb>) shows that the distribution of the world’s wealth is staggeringly uneven. **It predicted that in 2016, the richest 1% of the world population would possess more than the rest. And women possess an extremely small portion of this global wealth, amounting to only a few percentage points.**

✓ Doc. 20 In 2015, the EU confirmed the figures of 13.5% for the gender pay gap in Bulgaria and 16.3% in the EU. It also confirmed that “*the gender overall earnings gap in Bulgaria stands at 34.7% (the average gender overall earnings gap in the EU is 41.1%)*” (Eurostat figures, 2010).

✓ Doc. 21 In 2015, the EU gave details of the “gender pay gap”, glass ceilings which are actually more like reinforced concrete ceilings at all the stages in the careers (gpg_infographic_2015_en.pdf)

✓ Doc. 22 On 14 July 2016, Wikigender focused on the gender pay gap and noted that at the World Economic Forum in 2015, it was found that there was no country in the world in which women and men received equal pay for equal work (Doc. 22). The figures remain stubbornly the same but there are always alleged “grey areas” where it comes to this inequality (Doc. 22).

✓ Doc. 23 The World Bank came to the same conclusions in a study of 2016 entitled “Breaking the Gender Earnings Gap”.

✓ Doc. 24. In a study of 2016 on “Women, business and the law”, the International Bank for Reconstruction and Development dealt with gender distinctions and the law. In the country-by-country tables, Bulgaria’s results are positive (pages 98 and 99) but they fail to reflect the actual situation on the ground (Doc. 24). How can this gap between the law and reality be bridged?

✓ Doc. 25 In its study on “Women at Work – Trends 2016”, the ILO reiterates and corroborates the findings cited above and states that “if current trends prevail, it will take more than 70 years before gender wage gaps are closed completely” (Doc. 25, p. xvi).

✓ Doc. 26. In the EU EIGE Gender Equality Index for 2015, the EU had an index of 52.9% and Bulgaria one of 38.5%. <http://eige.europa.eu/gender-statistics/gender-equality-index>

✓ Doc. 26/1 In 2014, the EIGE calculated a gender equality index for each of the EU countries. This brochure also points out that even though women have proved their ability by obtaining as many academic qualifications as men, wage segregation and every form of sexism still exists in society. Reading this document is highly instructive as it reminds us of fundamental rights and the requirements of justice but also that progress is slow. Section 7 relates to money and shows that circumstances are more financially insecure for women.

Bulgaria’s index is lower than that of other countries, well below the median level.

✓ Doc. 27 The EU’s Gender Equality Report for 2015, published in March 2016, includes more recent figures, which still show the same disparities.

✓ Doc. 28 Page 18 of the European Commission’s “Report on equality between women and men 2015” deals with “equal pay for equal work and work of equal value” and shows that women are still paid 16% less than men. The explanations are still the same and the results are stable (Doc. 28, pages 11-13, 19-22).

✓ Doc. 29 In 2016, the EU published a new country-by-country report on the gender pay gap. Bulgaria has an unexplained gender pay gap of 7.3% and an explained gender pay gap of 1.3% (Doc. 29 page 3).

✓ Doc. 31 In its report of 2016, on the “Progress of the world’s women 2015-2016” UN Women is able to pinpoint the facts more accurately than in previous reports but concludes nonetheless that we are still living in a world of men, in which women are discriminated against, and not yet in a world of gender equality.

✓ Doc. 36 The EU’s report of 2016 on Women on Boards for Bulgaria shows pronounced gender roles, discrimination and segmentation of the labour market (Doc. 36 page 61). Bulgaria has very few women in decision-making posts.

✓ Doc. 49 On the site of the EU Progress Programme, documents can be accessed which all assert that women are not paid the same as men for equal, similar or comparable work.

These documents are produced to show the scale of the problem.

Bulgaria has a developed economy but has failed to set up mechanisms to achieve equal pay. The budgets allocated to deal with this matter are inadequate and the result has not been forthcoming. Bulgaria cannot claim to be meeting its obligations under the Social Charter with regard to equal pay for women and men for equal work (Doc. 45).

According to the ILO's NATLEX database, Bulgaria has adopted 1 348 items of legislation in the fields of labour law, social security and related human rights (Doc. 35) whereas Germany has adopted only 1 281. The question then is what Bulgaria is doing to make this legislation effective because follow-up has been lacking.

Bulgaria's gross domestic product in 2015 was €44.162 billion; https://europa.eu/european-union/about-eu/countries/member-countries/bulgaria_en

In Bulgaria's report of 12 July 2012 to the Committee on the Elimination of Discrimination against Women, we learn that under Article 5 of the Bulgarian Constitution, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is considered a part of Bulgaria's domestic legislation. The CEDAW Committee considers that *“the Convention has not been given sufficient visibility as the legal basis for measures, including legislative and policy measures, to eliminate all forms of discrimination against women and to promote gender equality. The Committee is also concerned that there is insufficient knowledge and awareness among the branches of the Government, the National Assembly and the judiciary about the rights of women under the Convention, its concept of de facto or substantive gender equality, the Optional Protocol to the Convention, the general recommendations of the Committee and the views of the Committee on individual communications* (Doc. 40, page 3).

It continues in the following terms: *“the Committee continues to be concerned at the failure to specifically prohibit discrimination against women and to incorporate the principle of gender equality in all areas covered by the Convention, in line with articles 1 and 2 of the Convention, and at the fact that a gender equality law has not yet been adopted, despite the recommendations to do so made by the Committee in its previous concluding observations (A/53/38/Rev.1, paras. 238 and 250) and by the Human Rights Council in the universal periodic review of Bulgaria in November 2010 (A/HRC/16/9, para. 80.7)”*.

“The Committee calls upon the State party to adopt a gender equality law prohibiting all forms of discrimination on the grounds of sex and gender in all areas covered by the Convention, including through sanctions in cases of violations of the law, and embodying the principle of equality between women and men, in line with articles 1 and 2 of the Convention” (Doc. 40, page 4).

“[It] recommends that the State party:

a) Further strengthen the Office of the Ombudsman and the Commission for Protection against Discrimination with a view to becoming fully compliant with the Paris Principles and expand their activities addressing discrimination based on sex and gender;

b) Take measures to increase women's awareness and understanding of their rights under the Convention and of the functioning of the existing complaints mechanisms so that they are

better able to seek redress in cases of discrimination” (Doc. 40, page 4).

The CEDAW Committee calls on Bulgaria “(a) *to further strengthen its efforts to put in place a comprehensive policy with proactive and sustained measures, targeted at women, men, girls and boys, to overcome stereotypical attitudes about the roles and responsibilities of women and men in the family and in society;*

b) To take all appropriate measures to raise the awareness of the media and the advertising sector with a view to eliminating gender stereotypes, to ensuring that women are not portrayed as sexualized commodities and to promoting objective images of women actively participating in social, economic and political life” (Doc. 40, page 6).

The CEDAW Committee notes “*the continuing vertical and horizontal occupational segregation and the persistent wage gap between women and men, in particular in the public sector, the increased rate of women’s unemployment and the exclusion of Roma women from the formal labour market. It is also concerned about the lack of information on complaints related to labour discrimination based on sex, the low number of reported cases of sexual harassment and the low number of men taking paternity leave” (Doc. 40, page 9).*

It makes the following recommendations concerning employment: “*To narrow and close the wage gap between women and men by applying job evaluation schemes in the public and private sectors connected with wage increases in female-dominated sectors, and to strengthen the access of women, including Roma women and women belonging to other disadvantaged groups, to formal employment and entrepreneurship;*

b) To provide information on the enforcement of legal provisions related to labour discrimination based on sex and sexual harassment, and to include such data in its subsequent periodic report;

c) To encourage men to share parental responsibilities on an equal footing with women, including by taking paternity leave” (Doc. 40, page 7).

It is clear that in Bulgaria women and men do not receive equal pay for equal, similar or comparable work.

The result can be seen in the low number of collective complaints relating solely to women’s rights. It would be interesting to investigate what percentage of total collective complaints lodged relate specifically to gender equality.

There is clear evidence of a violation of the articles of the Social Charter which guarantee equal pay for women and men for equal or similar work – a violation which has extremely serious consequences for the dignity and self-respect of women subjected to such poor treatment by a state which, as all the studies show, knowingly favours men. The Charter requires the enjoyment of rights to be tangible and effective so any plan, no matter how substantial, is not enough in itself.

If the Committee were to recognise that Bulgaria complies with the Social Charter, this would validate the argument that it is reasonable to be subjected to unequal treatment with regard to pay. It would undermine the Social Charter, which offers so much hope for all women who are exploited so shamelessly in Bulgaria and elsewhere.

V. THE OBJECT OF THE COMPLAINT AND THE COMPLAINANT ORGANISATION'S CLAIMS FOR JUST SATISFACTION

The above-mentioned Additional Protocol of 9 November 1995 providing for a system of collective complaints and the Committee's Rules of 29 March 2004 have nothing to say on the question of compensation for expenses incurred in connection with collective complaints.

However, it is now accepted that, because of the quasi-judicial nature of proceedings before the Committee, in the event of a finding that the Social Charter has been violated the defending state should meet at least some of the costs incurred (decision of 13 October 2004 on Complaint No. 16/2003).

In relation to this case, the Committee will note the very substantial amount of work put in by the lawyer, Ms Anne Nègre, in carrying out the necessary research and preparing the complaint itself and the considerable time she had to spend on following the proceedings.

It should also be noted that although the complainant organisation is not being formally represented by a lawyer in the proceedings before the Committee, the technical nature of the subject matter has obliged the complainant organisation to make use of a lawyer's services.

Under these circumstances, UWE considers that, for work performed by a woman on behalf of women, it is justified for it to ask for the hours worked by Ms Anne Nègre and her expenses to be paid for at the usual rate for a service of this standard. UWE does not have the financial resources to pay for a lawyer and nor is it for Anne Nègre to work on such a case free of charge.

Since collective complaints form part of a country's democratic processes, the costs of proceedings should be covered whatever the outcome since they form part of the process whereby the Committee monitors compliance with the Social Charter in the state concerned.

The costs incurred amount to €10 000 excluding tax and should be paid directly to Ms Anne Nègre, who will present a bill for this sum to Bulgaria.

ON THESE GROUNDS,

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

The European Committee of Social Rights is asked:

- ✓ to confirm the competence of University Women of Europe, UWE to lodge this collective complaint;
- ✓ to confirm that the complaint is well-founded;

- ✓ to hold that Bulgaria's failure to observe the principle of equal pay for women and men for equal, similar or comparable work breaches the provisions of the Social Charter and subsequent related texts such as the revised Social Charter, particularly Articles 1, 4, 4§3, 20 and E;
- ✓ consequently, to order Bulgaria to pay €10 000 excluding tax directly to Ms Anne Nègre to cover the time she has spent and the costs she has incurred in connection with these proceedings on behalf of UWE.

19 August 2016

A handwritten signature in black ink, appearing to read "Anne Nègre". The signature is written in a cursive style and is positioned above a faint horizontal line.

VI. DOCUMENTS PRODUCED IN SUPPORT OF THE APPLICANT ORGANISATION'S CLAIMS

Documents relating to UWE's competence

1. 5 9 2009 UWE, Constitution
2. 25 6 2011 UWE, By-Laws (internal rules of procedure)
3. 18 8 1983 UWE, Council of Europe, participatory status
4. 5 9 2015 UWE, request for authorisation to lodge collective complaints
5. 5 9 2015 to 28 10 2015 UWE, e-mail exchanges
6. 29 8 2015 UWE, report of the general meeting
7. 29 8 2015 UWE, minutes of the general meeting
8. 26 6 2016 UWE, report of the general meeting
9. 1 7 2016 INGOs holding participatory status with the Council of Europe
- 9/1 21 6 2016 UWE's instructions to Ms Anne Nègre + copies of her identity documents (French)
- 9/2 21 6 2016 UWE's instructions to Ms Anne Nègre + copies of her identity documents (English)

Documents on the merits

10. 2013 OIT, guide égalité de rémunérations (ILO, Equal Pay – An introductory guide)
11. 2013 8 mars OMC, Echanges - Journée internationale de la femme en 2013 (8 March, WTO, Exchanges – International Women's Day 2013)
12. 2013 Article in French on research by University of Denver showing that equal pay will only be reached in 2085
13. 2013 EU, Equal Pay for Equal Work and Work of Equal Value: the Experience of Equality Bodies
- 13/1 2015 EU, Les femmes face aux inégalités, à la discrimination et au harcèlement: une réalité qui perdure (The Persistence of Discrimination, Harassment and Inequality for Women)
14. 2014 OECD, Unpaid_care_work
15. 2014 OIT, Rapport mondial sur les salaires 2014/15 (ILO, Global Wage Report 2014/2015)
16. 2014 EU, écart de rémunération (Tackling the gender pay gap in the European Union)
17. 2014 Conseil de l'Europe, Stratégie pour l'égalité (Council of Europe Gender Equality Strategy 2014-2017)
18. 2015 OMC, statistiques (WTO, statistics)
19. 2015 OXFAM, répartition des richesses mondiales (Wealth: Having it all and wanting more)
20. 2015 EU Bulgaria gpg_country_factsheet_bg_2015_en
21. 2015 UE, gpg_infographic_2015_en
22. 2016 Wikigender, The Gender Wage Gap
23. 2016 Banque Mondiale, Mettre fin aux écarts de salaire H/F (World Bank, Breaking the Gender Earnings Gap)
24. 2016 International Bank for Reconstruction and Development, Women, Business and the Law 2016
25. 2016 OIT femmes au travail (ILO, Women at Work)
26. 2016 EU, EIGE, Bulgaria, Gender Equality Index

- 26/1. 2014 EU, EIGE, L'Indice d'égalité de genre – Principaux résultats (Gender Equality Index – Main findings)
27. 2016 EU, Gender Equality Report 2015
28. 2016 EU, Report on equality between women and men
29. 2016 EU, Magnitude and Impact Factors of the Gender Pay Gap in EU Countries – Country Fiches
30. 2016 EU, Gender balance on corporate boards
- 30/1 2016 EU women-on-boards_fr.
31. 2016 UN, Progress of the World's Women 2015-2016
32. 2004 Catalyst, the Bottom Line
33. 2007 McKinsey, Women Matter
34. 2014 The Washington Post, More women at the top, higher returns
35. 2016 OIT, NATLEX banque de données sur législations du travail (ILO NATLEX labour legislation database)
36. 2016 EU, Bulgaria, mécanisme de coopération et vérification (Mechanism for co-operation and verification)
37. 2016 Council of Europe, Bulgarie, fiche Etat membre (Bulgaria– member state factsheet)
38. 2016 CSE conclusions en bref -2012-2015 (Social Charter – European Committee of Social Rights Conclusions in a Nutshell, 2012-2015)
39. 2015 EU, La situation économique et sociale en Bulgarie (The economic and social situation in Bulgaria)
40. 2012 CEDAW Committee, Concluding observations on Bulgaria
41. 2013 INED n°506 Masculinisation des naissances (report by the French National Institute of Demographic Studies (INED) on the increasing proportion of male births)
- 41/1. 2016 La Bulgarie | Comité d'Entreprise (works councils)
42. 2016 OIT Bulgarie Inspection Travail wcms_144916 (ILO, Labour inspection in Europe, wcms_120319)
43. 2016 EU, ec.europa.eu Bulgaria
44. 2016 BG OMBUDSMAN
45. 2016 EU, EIGE, About Bulgaria
46. 2016 ESC, Bulgaria, 14th report
47. 2016 CSE, Conclusions 2015 (ECSR, Conclusions 2015)
48. 2016 UN, Women's share of legislators, senior officials and managers
49. 2016 EU, WEBKE-32-10-353-FR-CpayGap (The Gender Pay Gap in Europe from a Legal Perspective)

Treaties, charters, laws, etc.

60. Charte Sociale Européenne, 18 octobre 1961 (STE 35) (European Social Charter, 18 October 1961 (ETS 35))
61. Charte Sociale Européenne, protocole additionnel du 5 mai 1988 (STE 128) (Additional Protocol to the European Social Charter, 5 May 1988 (ETS 128))
62. Charte Sociale Européenne, protocole additionnel du 9 novembre 1995 (STE 158) (Additional Protocol to the European Social Charter of 9 November 1995 (ETS 158))
63. Charte Sociale Européenne, révision du 3 mai 1996 (STE 163) (European Social Charter (revised), 3 May 1996 (ETS 163))
64. 1948 ONU, Déclaration droits de l'homme (UN, Universal Declaration of Human Rights)

65. 1950 CEDH (ECHR)
66. 1951 OIT convention 100, [wcms_decl_fs_97_fr 2.pdf](#) (ILO Convention No. 100)
67. 1957 Traité de Rome (Treaty of Rome)
68. 1958 OIT convention 111 (ILO Convention No. 111)
69. 1991 Bulgarian Constitution
70. 2012 UE Traité de fonctionnement (Treaty on the Functioning of the EU)
71. 1979 CEDAW
- 71/1. 1999 CEDAW, Optional Protocol
- 71/2. 1993 Déclaration de Vienne
72. 2007 Traité de Lisbonne (Treaty of Lisbon)
73. 2003 Bulgaria, Act of 24 September 2003 on protection against discrimination, as amended
74. 2002 Bulgaria, Act of 2002 on equal opportunities for women and men
75. 2014 Bulgaria, Decree No. 108 of 10 May 2014 amending Decree No. 313
76. 2004 Bulgaria, Decree No. 313 of the Council of Ministers of 17 November 2004
77. 2012 Bulgaria, Law of 26 July 2012 amending and complementing the Law on protection against discrimination
78. 2010 Bulgaria, Law of 27 July 2010