

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



15 November 2016

**Case Document No. 1**

**University Women of Europe (UWE) v. France**  
Complaint No 130/2016

## **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,  
10 avenue du Général Mangin, 78000 Versailles - France  
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**THE HIGH CONTRACTING PARTY**

FRANCE

## 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 Man<sup>1</sup>, 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 17<sup>th</sup> 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?

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<sup>1</sup> 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 France, in breach of the European Social Charter (hereinafter “the Social Charter”). The Committee must do justice to women and find against France.

### III. ADMISSIBILITY

#### 3.1. On the holder of the right to a complaint

UWE intends to demonstrate that that the European Committee of Social Rights has the jurisdiction to examine the current complaint.

On 5 May 1949 France joined the Council of Europe as one of the ten founding states. On 18 October 1961, in Turin, it signed the European Social Charter (hereinafter “the Social Charter”), which came into force on 26 February 1965 (Doc. 60). It then ratified it on 9 March 1973 and it came into force in the country on 8 April 1973. Its purpose is to secure the economic and social rights of European citizens of both sexes.

Following the Additional Protocol of 1988, France ratified the revised European Social Charter on 7 May 1999 and was subsequently bound by all its articles.

France also ratified the Additional Protocol of 9 November 1995, which authorises collective complaints under the conditions set by Articles 1 et seq. (Doc. 62). The aim of the Protocol is to enhance the monitoring of member states through a more effective mechanism than mere annual reports drawn up, *ex parte*, by the member states themselves. Both the revised Charter and the Additional Protocol came into force in the country on 1 July 1999.

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/GEFUDU shall be that of IFUW.*
- 2. Should the seat of IFUW be moved outside Europe, the seat of UWE/GEFUDU 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/](http://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](mailto: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.

GWI 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 France 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 France 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 France**

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 France.

## 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. France, 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.

France has submitted many reports and replied to observations.

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. France](#), 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**”).

France 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 France 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 France**

✓ (Doc. 66) 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 France  
[http://www.ilo.org/dyn/normlex/fr/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102632](http://www.ilo.org/dyn/normlex/fr/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102632)

A non-exhaustive list of clear and detailed legal provisions could be drawn up, but none of these are actually 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>). France is a founding member of the European Economic Community and, in this respect, it has signed and ratified the Rome Treaty and Article 119.

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 France.

✓ Docs. 71 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. France signed the Convention on 17 July 1980 and ratified it on 14 December 1983, then ratified the optional protocol on 10 December 1999 (Docs. 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.

✓ Doc. 98 And of course the Treaty on the Functioning of the European Union provides in its Article 157, that each member state must ensure that the principle of equal pay for equal work or work of equal value is applied. France fails to comply with this provision.

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 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. France fails to meet this requirement and therefore the finding should be against it.

### **4.3. The main legislation applicable in France**

In Law, the French Declaration of the Rights of Man and the Citizen of 1789 (<https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>; Doc. 64) and the declarations following on from it such as that of the United Nations in 1948 all proclaim the equality of women and men. Even Article 1 of the French Constitution on equality has been amended to include equality of the sexes (Doc. 69). History has shown, however, that what was really meant was equal rights for men alone and that in no respect was the word man used in its more generic form to mean humankind as a whole.

The Committee may refer to the full body of law set up by France, which accompanies this complaint, and the articles of the Labour Code and the case law which are cited:

✓ Doc. 70 Law No. 72-1143 of 22 December 1972 on equal pay for men and women introduced the principle of equal pay for equal work. Since then successive laws have been passed but the political will has stopped there.

✓ Doc. 73 Law No. 83-634 of 13 July 1983 on the rights and obligations of public

sector workers and occupational equality in the public services. The state should set an example wherever it has all the authority of an employer over its employees. Where it allows inequality to persist, that is its choice.

- ✓ Doc. 74 Law No. 83-635 of 13 July 1983 amending the Labour Code and the Criminal Code with regard to equality between women and men at work.
- ✓ Doc. 75 Law No. 2001-397 of 9 May 2001 on occupational equality between women and men. This law updates and consolidates the Law of 1983 by setting out means of implementation.
- ✓ Doc. 76 Law No. 2001-1066 of 16 November 2001 on measures to combat discrimination includes, in particular, the legal rules on the evidence for and concept of discrimination.
- ✓ Doc. 77 The National Interoccupational Agreement of 1 March 2004 on diversity and gender equality at work. This sets out several aims including reducing the wage gap, facilitating access to vocational training for women, ensuring that maternity or parenthood does not hold back career development and ending imbalances in the recruitment of women and men.
- ✓ Doc. 78 Order of 22 April 2005 extending the National Interoccupational Agreement on diversity.
- ✓ Doc. 79. Law No. 2006-340 on pay equality between women and men.
- ✓ Doc. 69 A constitutional amendment of 23 July 2008 amended Article 1 of the Constitution to read as follows: “*Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility*”.
- ✓ Doc. 80 Law No. 2011-103 of 27 January 2011 on balanced representation of women and men on management and supervisory boards and occupational equality. It provides that the proportion of members of such boards of each sex must not be lower than 20% by the end of a period of 3 years following the enactment of the law, then 40% on the second renewal of the membership of the board following the enactment of the law or otherwise within a period of 6 years.
- ✓ Doc. 81 Law No. 2014-873 of 4 August 2014 on real gender equality
- ✓ Doc. 82 Law No. 2014-994 of 17 August 2015 on social dialogue and employment

This legislation can all be found in the case file.

In the relevant French legislation it is stated that: “*All employers must ensure equal pay for women and men for equal work or work of equal value*” (Article L 3221–2 of the Labour Code).

Law No. 2006-340 of 23 March 2006 and Law No. 2015-994 of 17 August 2015 require regular negotiations on equality to be carried out at sectoral level – and the same applies at company level. Companies with 50 employees or more must conduct negotiations on gender equality at work every year (Articles L 2242–8 and L 2242-5 of the Labour Code). Specific requirements are also imposed on companies with 300 employees or more.

A three-year action plan must be implemented in companies with 50 employees or more, with penalties for failure to comply (Articles L 2242– 8 and L 2242–9 of the Labour Code).

In France, the appointment of staff representatives in companies and the rules relating to them are applicable to private law employers, and to state-owned industries and companies when they take on staff under private law conditions (Article L 2321-1 of the Labour Code). Provision is made for a full staff representative and a substitute to be elected if the company has 11 to 25 employees, two full representatives and two substitutes if it has 26 to 74 – and so on (Article R 2324-1 of the Labour Code).

Companies with 50 employees or more must have a works council (Article L 2321-1 of the Labour Code). For up to 300 employees, there may be a single representative organisation for staff bringing together the staff representatives and the works council (Articles L 2324-1, L 2324-2 and L 2326-3 of the Labour Code). A works council must also be set up where separate companies are officially recognised as forming a single economic and social unit (Article L 2322-4 of the Labour Code). Trade unions also operate in companies with 50 employees or more (Article L 2143-3 of the Labour Code), whereas in companies with fewer than 50 employees, a staff representative may play this role (Article L 2143-6 of the Labour Code).

In the instant case, it should be noted that most obligations concerning the production of statistical documents apply, for the purpose of establishing staff representative bodies, to companies which have 50 employees or more and hence have works councils, or to economic and social units bringing together various legally distinct companies. And this, of course, assumes that there are no shortcomings in the elections.

In 2011, according to the French National Institute of Statistics and Economic Studies (INSEE), French companies could be divided into the following categories (Doc. 43, [http://www.insee.fr/fr/themes/document.asp?ref\\_id=if4#inter1](http://www.insee.fr/fr/themes/document.asp?ref_id=if4#inter1)):

*“3.14 million non-agricultural commercial companies are based in France. They consist of:  
243 major companies which, on their own, employ 30% of all employees;  
5 000 intermediate-sized companies;  
138 000 small and medium-sized enterprises (SMEs) not including micro-enterprises, and  
3 million micro-enterprises”.*

*“In 2010, in the private sector, women’s wage income was 28% lower than that of men. Since 1995, the gap between men’s and women’s wage income had slightly decreased as a result in particular of the fact that the share of managerial posts occupied by women had increased. Nonetheless, they still occupied over 70% of non-managerial posts, in which wages are lowest.*

*The share of jobs occupied by women and men differed greatly according to sector of activity. In retail and in many service activities, most jobs were occupied by women. Hourly wages and the number of hours worked are often lowest here, both for women and men. In the tertiary sector as a whole, the average wage income of women was 27.5% lower than that of men.*

*In the industry and construction sectors, the gender wage gap was less pronounced but the average wage income of women was lower than that of men by 18.8%.*

*In 2010, in the public sector, the wage gap between men and women was 18%, or ten points less than in the private sector. This gap has remained stable, however, over the last ten years” ( Doc. 42, 2013 INSEE, Première No. 1436 – private and public income).*

Very few employees are actually covered by systems which require reports to be submitted to staff representative bodies on the detailed nature of their work. And in practice, few trade unions or elected representatives take up the issue. Statistical documents may exist but they can rarely be used by employees and are very rarely available.

In most companies in France, employees do not know how much other employees earn or what benefits they receive. Employers should have a binding obligation to publish this information.

#### **4. 4. The application of the principle of equal pay for equal or similar work**

**4.4.1. The source of the principle:** Article L 2361-22 of the Labour Code sets out the conditions to be satisfied by a collective agreement, which is the sectoral agreement negotiated by the social partners, with regard to the arrangements for the application of the principle of equal pay for equal work.

Article L 2271-1 of the Labour Code lists the functions of the National Collective Bargaining Commission, which has a particular obligation to abide by this principle. However, nobody has proposed to put this legislation into practice.

It was the Court of Cassation, the French Supreme Court, which did so, in a judgment of 29 October 1996 assigning this principle the status of a binding rule (Court of Cassation, Social Division (Cass. Soc.), 29 October 1996, No. 92-43680). This judgment, known as the Ponsolle judgment, states that “*it is to be inferred from this that employers are required to ensure equal pay for all employees of both sexes provided that these employees are in an identical situation*”.

To consult the relevant judgments (in French), it is sufficient to go to the French law website Légifrance and click on the link to “*jurisprudence judiciaire*”. Choose “*Cour de Cassation*” in the first drop-down list then enter the number of the case or the words sought in the relevant box.

Since this judgment, the rule has been reiterated on numerous occasions (Cass. Soc., 15 December 1998, No. 95-43630; 5 June 2001, No. 99-42772; 13 January 2004, No. 01-46407; 7 April 2010 Nos. 08-44865, 08-44866, 08-44867, 08-44868 and 08-44869; 6 July 2010, No. 09-40021).

It is quite clear what a large discrepancy there is between the law that was adopted, its interpretation by the judges and its practical application.

**4.4.2. The unlawful nature of discretionary decisions by employers:** According to the principle, if there is no objective distinction between two employees, and they have the same length of service, the same work, the same training and the same qualifications, they must be paid the same wage (Cass. Soc., 10 October 2000 No. 98-41389; 20 June 2001, No. 99-43905). Length of service, for instance, may not be used as a distinguishing criterion (Cass. Soc. 9 December 2015 No. 14-10874; No. 14-18033).

Although employers’ decisions on wages may not be discretionary, there are exceptions, such as discretionary premiums or bonuses, or special bonuses, which are not based on predetermined objective criteria (Cass. Soc., 10 October 2012, No. 11-15296).

Basic wages and related payments are covered by the principle of equality (Cass. Soc., 5 January 2001, No. 99-42772). However, in practice, it is not that difficult to set up strategies to bypass the requirement.

It is worth drawing particular attention to a judgment of the Court of Cassation in 2009, in which it was held that for it to be established that discrimination exists, it was not always necessary to compare the situation with that of other workers, meaning that there was very broad scope for comparison including, where appropriate, the use of hypothetical comparators (Cass. Soc., 10 November 2009, No. 07-42849).

**4.4.3. The scope of application of the rule:** The Court of Cassation has consistently held that application of the equal pay rule is confined to companies which are distinct legal persons (Cass. Soc., 12 July 2006 No. 04–46 104).

The principle does not apply to comparisons:

- between employees working in separate establishments belonging to the same company (Cass. Soc., 7 April 2004 No. 01–42758)
- between employees working for the same group (Cass. Soc., 20 November 2012, Nos. 11-20.41, 11-20342, 11-21558, 11-21559 and 9 October 2013, No. 12–16664)
- between employees working for the same economic and social unit (Cass. Soc. 30 May 2012, No. 11–11387)
- between employees seconded from another body (Cass. Soc. 6 July 2005 No. 03–43074).

This represents a large number of exceptions to the rule, which seriously undermine its effectiveness.

**4.4.5. The equal work or work of equal value rule:** It is Article L 3221-4 of the Labour Code which sets the requirement of equal work or work of equal value and defines this as “*activities which require employees to have comparable levels of professional knowledge acknowledged by a qualification, a diploma or professional practice, comparable skills deriving from their experience, comparable responsibilities and comparable physical or emotional burdens*”. The Court of Cassation recently set aside a decision as being legally unfounded solely on the basis of coefficients (Cass. Soc., 20 May 2015, No. 13-27643).

This rather inflexible approach to job profiles has now been combined with a more flexible approach taken by the Court of Justice of the European Union in which it assesses the nature of the work of two persons by more comparative means rather than with reference to coefficients (Cass. Soc., 20 February 2013, No. 11-26855).

The case law has evolved, moving from identical functions to similar ones, based on the criteria set out in Article 3221–4 (6 July 2010, No. 09-40021). Similarly, diplomas may now be comparable [rather than strictly identical] (Cass. Soc., 11 July 2007, No. 05-45324). Provided that the functions performed by each of the persons concerned are of equal value, the principle of “equal pay for equal work” applies even if, in practice, these functions are different (Cass. Soc. 10 July 2013 No. 12-13790; 25 March 2015, No. 14-10149; 4 March 2015, No. 13-20631 ). This is a promising step forward.

However, none of this has addressed the problem where it comes to the Court of Cassation’s demands concerning the burden of proof, which still lies entirely with the employee. In a recent case, the Court of Cassation considered that “the Court of Appeal, which was not required to accede to the employee’s request to produce documents, thus legally justified its decision without relying on the employer’s discretionary power” (Cass. Soc., 23 September 2015, No. 14-12328).

The case law shows that many cases are brought by male employees complaining that they are not being treated in the same way as their colleagues. The legislation adopted for women is always also to the benefit of men.

In addition to the direct loss of wages, the short prescription period of 3 years in France for backpay or compensation for loss of opportunity of 20% per year is never taken into account. And then there is the matter of pensions, which are directly affected by the wage gap, as described in the European Union's survey of France, which talks of a gap of 38% (Doc. 36, page 55).

#### **4.4.6. Equality monitoring bodies:**

- **The “Defender of Rights”** is a national institution for the protection and promotion of rights, set up in 2011, to which cases may be referred free of charge by anyone who feels that he or she has been discriminated against. His main task is to defend people whose rights have been infringed in the area of equality, particularly with regard to discrimination.

There is little in common between the way in which the Defender of Rights is presented in the report and the opinion issued by Equinet (Doc. 13 and 13/1) or the actual circumstances on the ground.

The Defender of Rights will usually only take action if he is presented with a full case file. If for example a female employee presents him with information about a career in which there has been no visible increase on her pay slips over the last 20 years or there has been little change in her hierarchical coefficient despite the fact that she has high levels of responsibility, the Defender of Rights will refuse to question the employer about the career development and wage increases of employees of the same age taken on at the same level. For the most part, he will only take action in cases in which all the evidence has already been gathered.

Before the establishment of the Defender of Rights, there was the High Authority against Discrimination and for Equality (HALDE), whose actions caused much discontent among businesses. It was decided to restrict the activities of this institution and this again **was a political choice**.

- **The labour inspectorate** supervises the activities of private companies and is made up of labour inspectors and “labour controllers”. The latter are accountable to the General Delegation for Employment and Vocational Training of the Ministry of Labour, which is arranged into decentralised departments at regional level as directorates for enterprise, competition, consumer affairs, labour and employment (Decree of 10 November 2009, No. 2009-1377). Labour inspectors are authorised to report offences and issue official notices to comply (Article L 4721-4 of the Labour Code).

In practice, not only is it awkward in any company to ask one's employer for evidence of inequalities but it will almost certainly leave the door open to a hasty dismissal.

If the labour inspectorate, which is the representative of the state, took even the slightest interest in these issues, inequalities would soon be reduced. Labour inspectors have the right to demand any relevant documents and the power to require employers to provide comparators, but the subject is rarely raised. It is a political choice not to have more labour inspectors and not to make them carry out this priority task.

In both instances, it is clear that France refuses to deal with the issue properly.

**It costs less just to adopt a few laws and then avoid any proper arrangement to apply**

**them.**

What solution is there for an underpaid woman employed by a small business? Or for a woman working for a large firm with staff representation bodies, in which it is mainly men who occupy the decision-making posts?

Bringing the case before the relevant labour court will be a haphazard process because the employee will have to adduce legal and above all substantive evidence in support of her arguments. Any request by the employee for an expert opinion or the production of documents by the opposing party will be refused, as the courts practically never make use of their power to order documents to be produced or even to appoint a court rapporteur to prepare the case for judgment, which is less costly than commissioning an expert report.

If an expert report is ordered, both the employer and the employee have to deposit a sum in the region of at least €2000, which is an inordinately large and unfair amount for an employee. On 1 July 2016 the guaranteed gross minimum wage in France was €1 466.62 per month meaning that the sum that has to be deposited for an expert report is often higher than one month's salary. If the expert report is complex, further funds may be called for and if the employee loses, she will be charged these sums and they will not be returned, which may be a crippling blow.

Furthermore, the courts systematically point out that an investigative measure may not be ordered to make up for the failings of one of the parties.

If the employee has witnesses whom she wishes to call, the President of the Court has complete discretion not to hear them, and this is commonplace.

The state is directly responsible for these proceedings and their shortcomings.

If a company has fewer than 11 employees then it has no documents to draw up – and it has very few to draw up if it has fewer than 49 employees.

Women who take legal action are also at great risk of dismissal, albeit of course on another pretext. And this is not to mention the cost of such proceedings, the energy they require and the pressure they place women under. It is such a difficult process that no reasonable lawyer can consider involving female employees in court proceedings unless their employment contract has been or is about to be terminated.

There is also a last obstacle, which is the fact that under Article L-3245-1 of the Labour Code, the prescription period for such cases is now only three years. As a result, embarking on such proceedings in France could not be more risky and it is impossible to know what the result may be.

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

According to an EU study published in January 2016, “Gender balance on corporate boards” (Doc. 30 page 1), women represent 22.7% of the members of boards of directors in the European Union, but only in major companies.

The Committee will note that under pressure from French associations, a law has been adopted (No. 2011-103 of 27 January 2011), which has set a quota of 40% of each sex in the management and supervisory boards of major private and public enterprises. While the number of women has tripled in listed companies, in the 400 non-listed companies concerned, with over 500 employees and a turnover of over €50 million, the results have fallen short of the objectives set.

95 % of the seats on administrative and supervisory boards are occupied by men and there is not a single woman in charge of any of the top 40 companies on the French stock exchange, the CAC 40. In practice, it has been noted that it is always the same women who occupy the maximum permitted number of seats on boards.

As to executive boards not covered by the law, these are still just as closed off to women. (Doc. 51, 52).

A recent study has shown that women company board members receive lower attendance fees (*jetons de présence*), than their male counterparts (Doc. 52 page 7).

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.

Seeing to it that sufficient numbers of women are appointed to decision-making posts is a prerequisite for France to change and alter its way of governing, and for companies to bring themselves in line with the law, focusing on its benefits rather than how it may hold them back.

As these leaders in France 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 (Doc. 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** (). None of economic analyses treat this source of dynamism as a decisive factor for the future of the economy. Indeed, many analyses still regard women's wages as a secondary income, as stated by INSEE. 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? These are political choices and France is reluctant to act here.

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

#### **4. 6. What is the situation in France with regard to wage inequality between women and men for equal or similar work, as viewed by France?**

✓ Doc. 56 According to the analysis conducted by the *Observatoire des inégalités* on 27 May 2016, <http://www.inegalites.fr/spip.php?article972>:

***“When all categories of working time are combined, men earn 23.5% more than women. Nearly 11% of the pay gaps between the genders are unexplained and constitute “pure” discrimination.***

*“The average net monthly wage earned by men for full-time work is €2,389 in 2013, and the average net monthly wage earned by women is €1,934 – a gap of €455, which is almost equal to half of the guaranteed minimum wage. This means that men earn, on average and on a full-time equivalent basis, a wage which is 23.5% higher than that of women (see below for methodological information regarding the way in which the gap is measured). Or, in other words, women earn on average 81% of the pay earned by men (1,934 divided by 2,389), or 19% less.”*

*“The higher up the pay ladder one goes, the greater the gap between women and men becomes, partly because there are far fewer women at the top of the ladder. Using FTE pay as the basis for comparison once again, the highest pay level among the lowest-paid 10% of women is 8% lower than the figure for men (€1 154 for women versus €1,254 for men). The minimum salary of the highest-paid 10% of women is 22% lower than the figure for men (€3*

036 for women as compared with €3 892 for men). At the **median** salary level, women's wages are 14% lower, or €263 per month less than their male counterparts.”

<b>Pay gaps broken down by gender and pay level</b>					
<b>Net monthly wages as full-time equivalent</b>					
Unit: euros					
	Men	Women	Overall	Gap (in euros)	Gap (%)
10% of employees earn less than	1 254	1 154	1 200	- 100	- 8
20% ...	1 415	1 268	1 342	- 147	- 10
30% ...	1 559	1 374	1 471	- 185	- 12
40% ...	1 709	1 485	1 609	- 224	- 13
50% ...	1 882	1 619	1 772	- 263	- 14
60% ...	2 100	1 794	1 974	- 306	- 15
70% ...	2 405	2 029	2 244	- 376	- 16
80% ...	2 921	2 368	2 682	- 553	- 19
90% ...	3 892	3 036	3 544	- 856	- 22
5% of employees earn more than	5 030	3 756	4 526	- 1 274	- 25
1% ...	9 253	6 053	8 061	- 3 200	- 35
<b>Overall</b>	<b>2 389</b>	<b>1 934</b>	<b>2 202</b>	<b>- 455</b>	<b>- 19</b>

*FTE wages in the private sector and public-sector enterprises, including beneficiaries of assisted contracts. Apprentices, trainees, agricultural workers and employees of private individuals who employ persons as domestic help are excluded. Interpretation: 50% of women earn less than 1 619 euros per months (FTE) and earn 14% less than men.*

Source: Insee – 2013 Data – © Observatoire des inégalités

### The gaps also depend on social category.

Wage inequality between the genders is greatest among managers, i.e. among the highest wages: women earn 26.3% less than men. Conversely, the smallest gap is to be found among employees (-9.3%), a category in which women make up the majority.

<b>Pay gaps broken down by gender and social category</b>				
<b>Average net monthly wages as full-time equivalent</b>				
Unit: euros				
	Men	Women	Overall	Gap (%)
Senior managers and salaried business owners	4 380	3 469	4 072	- 26.3
Intermediate occupations	2 394	2 068	2 254	- 15.8
Non-managerial employees	1 714	1 568	1 612	- 9.3

Workers	1 736	1 441	1 686	- 20.5
Overall	2 389	1 934	2 202	- 19.0
Gap between managers and workers	2 644	2 028	2 386	

*FTE wages in the private sector and public-sector enterprises, including beneficiaries of assisted contracts. Apprentices, trainees, agricultural workers and employees of private individuals who employ domestic help are excluded. Interpretation: female senior managers earn 26.3% less than male managers (FTE).*

Source: Insee – 2013 Data – © Observatoire des inégalités

### **From the overall gap to discrimination**

*Note: we will use figures from the Ministry of Labour below, and not INSEE figures as in the first part of this article.*

#### **1- Overall gap: women earn 25.7% less than men**

*When all categories of working time are combined (part-time and full-time), women's wages are on average equivalent to 74.3% of men's wages, according to the 2012 figures from the Ministry of Labour [2]. So women earn 25.7% less ( $100\% - 74.3\% = 25.7\%$ ) than men. Or, in other words, men earn 34.6% more ( $100$  divided by  $74.3$ , see the methodological information provided).*

#### **2- Gap for full-time jobs: women earn 16.3% less**

*The first factor that explains the wage inequality stems from the differences in working time. The number of women in part-time work is four times greater than the number of men, so it is logical that their income – when all categories of working time are combined – is lower than that of men. In addition, the working time of men is also increased by overtime, which they do more often than women. However, even when the comparison is narrowed down to full-time pay, women still earn 16.3% less.*

#### **3- Gap for the same working time and occupation: women earn 12.8% less**

*If differences in terms of age bracket, type of contract, working time, sector of activity and company size are taken into account, there is an unexplained pay gap of approximately 10.5% according to the data from the Ministry of Labour.*

*This difference in treatment comes close to pure discrimination (or discrimination “other things being equal”) by employers against women. However, other factors which are not*

measured here can come into play and partly explain this phenomenon, such as family situation, degree subject or career breaks.

<b>Breakdown of pay gaps between women and men</b>	
Unit: %	
	Women earn ...% less than men
<b>Gap when all categories of working time are combined</b>	<b>25.7</b>
Effect of part-time work	- 9.4
<b>Gap for full-time work</b>	<b>16.3</b>
Effect of unequal distribution of occupations*	- 3.5
<b>Gap for full-time work in an equivalent occupation</b>	<b>12.8</b>
Structural effects for equivalent occupations (age, sector of activity, company size, type of contract of employment)	- 2.3
<b>Unexplained part</b>	<b>10.5</b>

*Employees in the private sector and public enterprises, excluding company bosses and agricultural occupations, public administration and legal occupations, the armed forces and the police. Interpretation: women's wages are on average 25.7% lower than those of men when all categories of working time are combined. If only full-time work is considered, when the effect of part-time work (9.4%) is taken away, the gap is 16.3%. \* Women and men do not pursue the same occupations. For example, women are very numerous in the personal*

*services sector, whereas men are more numerous in the construction sector.*

Source: Ministry of Labour – 2012 Data – © Observatoire des inégalités

✓ Doc. 49 According to the French Ministry of Labour, Employment, Vocational Training and Industrial Relations, in an analysis published on 6 November 2015 with regard to “*occupational segregation and pay gaps between women and men*”:

*“In 2012, the net hourly wage of women was on average 16.3% lower than that of men. This reflects both pay gaps within each family of occupations and also significant differences in pay between occupations.*

*The wage gaps within occupations account for three-quarters of the wage inequality between women and men. In each occupation, women are more likely than men to be at the bottom of the pay ladder and find it more difficult to access the best-paid jobs. These wage inequalities between women and men increase with the skill and pay levels associated with occupations.*

*Wage inequalities are also linked to the fact that more women than men are employed in the lowest-paid occupations. In 2012, the average net hourly wage in “women’s” occupations was almost 19% lower than that earned in “men’s” occupations.*

*Where the observable characteristics of employees and jobs within families of occupations are identical, women are less well paid than men. This gap “other things being equal” accounts for two-thirds of the observed pay gap.*

✓ Doc. 48 The figures reported by the Ministry of Employment’s Research, Studies and Statistics Directorate, DARES, in a March 2015 study, “*Measuring the pay gaps between women and men*”, have shown the following situations since 2012 (Doc. 48, Page 4), :

Table A – Measurements of the pay gap between women and men in DARES publications since 2012

Title	Available indicators	Calculated pay gap between women and men	Breakdown	Field	Source
Wages per sector and occupational field in 2012	Levels, changes and gap in relation	-19.2%	Sector, field	Private sector and public-sector enterprises	DADS 2012

	to average net monthly wage FTE			Employees excluding apprentices, trainees	
Statistical overview of the main branch collective agreements in 2012	Gap in relation to average net monthly wage FTE, no levels	-20.2%	Field	Private-sector collective agreements, all employees	DADS 2012
Pay gaps between men and women in 2009	Levels and gap in relation to gross total annual pay	-26.7%	Socio-professional category, length of service, position, decile, degree, sector, field	Companies with 10 or more employees in a competitive sector, excluding apprentices and trainees; Metropolitan France only	Ecmoss [Survey on the Cost of Labour and Wage Structure] 2009
		-17.0%		As above, limited to full-time only	
	Levels and gap in relation to gross hourly wage	-14.2%		As above, limited to those employees whose time is counted in hours	

<p>Women and men in the labour market. The disparities are reducing but the jobs that are held are still very different</p> <hr/>	<p>Gap in relation to average net wage FTE, no levels</p>	<p>-18.8 %</p>	<p>None</p>	<p>All sectors of activity, all employees, Metropolitan France only</p>	<p>DADS 2012</p>
<p>Disparities in the labour market between women and men</p> <hr/> <hr/> <hr/> <hr/>	<p>Gap in relation to average net monthly wage, no levels</p>	<p>-25.0%</p>	<p>None</p>	<p>All sectors of activity, all employees, Metropolitan France only</p>	<p>2010 Employment Survey</p>
<p>-15.0%</p>	<p>As above, limited to full-time only</p>				
<p>Pay gaps between women and men per area of employment</p>	<p>Levels and gap in relation to average net monthly wage FTE</p>	<p>-19.7%</p>	<p>Area of employment</p>	<p>Private sector and public-sector enterprises, employees excluding apprentices, trainees.</p>	<p>DADS 2010</p>
<p>Levels and gap in relation to net hourly wage</p>	<p>-18.4%</p>				



Interpretation: in the study entitled *Les salaires par secteur et par branche professionnelle en 2012* (Wages by sector and occupational field in 2012), the average net monthly wage FTE for women is 19.2% lower than that of men.

The figures are clear and prove that there is inequality.

✓ Doc. 47 Another DARES publication of 5 March 2015 confirms these inequalities in treatment

✓ Doc. 46 The Committee will be interested to read the report on “*Le sexisme dans le monde du travail*” (Sexism in the World of Work) by the *Conseil Supérieur de l’Egalité Professionnelle* (High Council for Occupational Equality) published on 6 March 2015, which mentions the constant sexism to which women are subjected and, interestingly, draws attention to the disregard for the law, which is currently French or European or international.

This report laments the absence of clear case law and the lack of mobilisation in response to this challenge, and ends with recommendations which, as happens all too often, will have barely any impact.

Another interesting point to note is that in the public service sector, i.e. when the state is the employer, the pay gap still exists. Various reports have been published, but the status quo persists. This, too, shows that there is a political desire to keep things as they are.

We also have problems in terms of women’s careers. The figures with regard to the place of women in the hard sciences are the same as they were 20 years ago.

✓ Doc. 45 The report of 10 March 2015 by the Ministry of Decentralisation and the Civil Service concerns “*the pay gap between women and men through the prism of gender inequalities*”. Here too, the French state is not fulfilling its obligations under the European Social Charter. The average pay gap between women and men is 12% in the public service sector, as compared with 19% in the private sector (Doc. 45 page 3). The ministries in which the greatest discrimination exists, with gaps of 15%, are the Ministries of Foreign Affairs and the Interior, and the departments coming under the Prime Minister must also be added. This is the worst aspect of all (Doc. 45 page 7).

✓ Doc. 40 In the Report to the President of the Republic on occupational equality between men and women in the public service sector of January 2011, the Committee will note a similar situation, with little progress between 2011 and 2015.

✓ Doc. 44 The *Conseil d’analyses économiques* (Council for Economic Analyses) looked at “*Reducing pay inequalities between women and men*” in its issue no. 17, October 2014. This analysis shows that the unpaid working time of women accounted for an additional 33% of GDP in France in 1997 (Doc. 44 page 5), in addition to the other information concerning the causes of inequality in France.

It is time for France to be reminded of its obligations in terms of strict social, if not democratic, justice. Women are still clearly regarded as inferior and exploitable beings. And those who are most vulnerable are even more affected.

However, the European Social Charter asserts the contrary.

This is what the French Minister for Families, Childhood and Women's Rights acknowledged in her report when she spoke before the CEDAW Committee on 8 July 2016 (Doc. 50):

*“However, she pointed out that while the progress was undeniable, it was insufficient to deal with the situations of discrimination experienced by women. Every day, the country sees situations which serve as a reminder that ‘the progress made in terms of women’s rights can never be fully taken for granted’.”*

She added: *“The delegation acknowledged that the issue of the **effectiveness of laws** was fundamental. This is the Government’s main focus, this is why the Law of 4 August is entitled “real equality”.*

It should be noted that the women's rights department within the Ministry of Families, Childhood and Women's Rights was swallowed up during an administrative reorganisation which made it less visible and effective. And what is left of it is constantly under threat.

If France wants to make progress, the minister with responsibility for women should not be the Minister of the Family and Children, which relegates the holder of this office to a role defined in patriarchal terms, or even that of a minor. Women come after “childhood”. And it is no longer women's rights that are the issue as such, but rather the enforcement and honouring of these rights.

In the light of these factors, the Committee will find, with even stronger reason, that the Social Charter is not being respected in France.

#### **4. 7. What is the actual situation in France 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 France, 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).

✓ Doc. 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, 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 14,8% in France, while identifying certain obstacles that accounted for this and making proposals

✓ 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 14). 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, page 26). 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 15,1% for the gender pay gap in France and 16.3% in the EU.

It also confirmed that “*the gender overall earnings gap in France stands at 32.9%,the average gender overall earnings gap in the EU is 41.1%*” (Eurostat figures, 2013 and 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, France’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 2016, France went backwards between 2010 and 2012, as its score fell from 55.9 to 55.7. (<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.

France’s score is just above the European average and, given that it has one of Europe’s largest economies, the result is mediocre.

✓ 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. Here, too, the situation is recognised and a proportion of over 8% remains unexplained in France (Doc. 29 page 10 UE\_. factors\_gpg\_country\_fiches\_en).

✓ Doc. 30 In 2016, in its report entitled “*Gender Balance on Corporate Boards*”, the EU found that, thanks to binding legislation, France has achieved the highest proportion of women on boards (Doc. 30 page 1). As in all places of power, women are absent from chief executives’ offices and many executive committees (page 4).

✓ 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. 39 In an EU brochure on “The gender pay gap in Europe from a legal perspective”, it is clear that contrary to what one might think, the pay gap is once again widening in France (Doc. 39 page 9).

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

France, which has one of the world's wealthiest economies, refuses to take the steps necessary to achieve equality (Doc. 36). France cannot be regarded as fulfilling its obligations in relation to the European Social Charter in terms of equality of pay between women and men for equal, comparable or similar work.

France has the formidable distinction of producing an abundance of employment legislation – 6 986 laws according to the ILO's NATLEX database (Doc. 35), which puts it ahead of the USA with 2 507 laws and Germany with 1 281 laws. But what is this country doing to make them effective? Not very much, other than voting for more new laws and passing new decrees without making them effective, as is clear from this database.

France itself acknowledges this inequality in a new law on equality – yet another one, but the means of enforcement never follow (Doc. 54).

It may be recalled that the Council of Europe's budget for 2016 is €42 255 900, with France contributing €37 597 652 (Doc. 37, <http://www.coe.int/fr/web/portal/France>).

France's gross domestic product is €2.184 billion, so it should be able to achieve equality ([http://europa.eu/abouteu/countries/membercountries/france/index\\_fr.htm](http://europa.eu/abouteu/countries/membercountries/france/index_fr.htm)).

At the same time, we learn that when she spoke before the CEDAW Committee on 8 July 2016, the French minister with responsibility for women *“also stated that the funds allocated to equality between women and men were estimated at €221 million per year”* (Doc. 50).

At the same time, grants for national organisations are decreasing, to the point where many are closing down. This is a recurring problem which is affecting all NGOs and international NGOs in every country. Public funding is drying up. Although states are funding entities contracted to deliver public services in the form of NGOs, they are essentially made up of salaried employees and there is no *“criticism”* of the management of public affairs. These organisations, NGOs and INGOs, are included in the calculation of funds allocated to the process of fostering democratic thinking. Similarly, some very large INGOs respond to, and depend for their survival on, calls for tenders issued by the EU and various institutions and states, and these INGOs also have many employees who are often highly competent. But a certain divide is definitely being created vis-à-vis the population. To realise this, one need only look at the grant allocated by the Council of Europe to INGOs in order to finance the INGO Conference of the Council of Europe.

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?

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 France 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 France 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 France.

**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 France'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 France 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





## 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. 2016 EU, France, gpg\_country\_factsheet\_fr\_2015\_en.pdf (The gender pay gap in France)
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. 2012 EU EIGE France 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 Assessment of France
37. 2016 Council of Europe, France fiche Etat membre (France – member state factsheet)
38. 2016 CSE Conclusions en bref (European Social Charter – Conclusions in a Nutshell)
39. 2010 UE WEBKE-32-10-353-FR-CpayGap (The Gender Pay Gap in Europe from a Legal Perspective)
40. 2011 FR, Report to the President of the Republic on the Public Sector
41. 2013 FR INED, no. 506, Masculinisation des naissances (report by the French National Institute of Demographic Studies (INED) on the increasing proportion of male births)
42. 2013 FR, INSEE Première no. 1436 – incomes in the private sector and the public sector
43. 2014 FR INSEE, Focus no. 4, entreprises, categories
44. 2014 FR, Economic Analysis Council, no. 17
45. 2015 FR, Ministry of the Public Sector, pay
46. 2015 FR, *Conseil Supérieur Egalite Professionnelle* (High Council for Occupational Equality), report on workplace sexism
47. 2015 FR, DARES, analyses
48. 2015 FR, March, DARES, pay gaps
49. 2015 FR, November, DARES, no. 82, Professional segregation and pay gaps between men and women
50. 2016 FR, 8 July, CEDAW, report on France
51. 2016 FR, 16 February, Dépêches JurisClasseur – article on parity on boards
52. 2016 FR, *Haut Conseil à l'Egalité* (High Council for Gender Equality), report no. 20160115
53. 2016 FR, *Observatoire des inégalités* (Inequality Monitoring Centre), current situation
54. 2016 FR Law for Real Equality between women and men

#### **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 Francen 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. 1983 Law no. 83-634 of 13 July 1983 on the rights and obligations of public-sector workers
74. 1983 Law no. 83-635 of 13 July 1983
75. 2001 Law no. 2001-397 of 9 May 2001 on occupational equality between women and men
76. 2001 Law no. 2001-1066 of 16 November 2001 on measures to combat discrimination
77. 2004 1 March, National Interoccupational Agreement on Diversity and Gender Equality at Work
78. 2005 22 April, Order extending the National Interoccupational Agreement on Diversity
79. 2006 Law no. 2006-340 of 23 March 2006 on pay equality between women and men
80. 2011 Law no. 2011-103 of 27 January 2011 on balanced representation of women and men
81. 2014 Law no. 2014-873 of 4 August 2014 on real gender equality
- 81/1. 2014, 7 March, EU Recommendation on strengthening the principle of equal pay between men and women through transparency
82. 2015 Law no. 2015-994 of 17 August 2015 on industrial relations and employment
83. Labour Code – Article L2143-6
84. Labour Code – Article L2242-5
85. Labour Code – Article L2242-8
86. Labour Code – Article L2242-9
87. Labour Code – Article L2261-22
88. Labour Code – Article L2271-1
89. Labour Code – Article L2321-1
90. Labour Code – Article L2322-4
91. Labour Code – Article L2324-1
92. Labour Code – Article L2324-2
93. Labour Code – Article L2326-3
94. Labour Code – Article L3221-2
95. Labour Code – Article L3245-1
96. Labour Code – Article L4721-4.
97. Labour Code – Article R2324-1
98. 2012 Treaty on the Functioning of the European Union