

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



16 December 2016

Case Document No. 2

**University Women of Europe (UWE) v. Ireland
Complaint No 132/2016**

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 14 December 2016

Collective Complaint

European Committee of Social Rights

University Women of Europe

v

Ireland

Complaint No 123/2016

Observations on the admissibility of the complaint

14 December 2016

Introduction

1. By letter dated 27 September the Deputy Executive Secretary of the European Committee of Social Rights wrote to the Agent for the Government of Ireland (the Respondent) to inform that the European Committee of Social Rights wished to receive written observations on the admissibility of the above complaint.

2. The Respondent submits that this complaint must be declared inadmissible for failure to comply with Article 4 of the European Social Charter (additional protocol) which states:

“ The Complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision. ”

(Emphasis added)

3. The standards for admissibility include a requirement that issues addressed should outline specific areas, a standard which is not met by the provision of general statistical information.

4. The enclosed submissions are without prejudice to any observations the Respondent may submit on the merits of the application as may be required.

The failure of the Applicant organisation to indicate in what respect the Respondent has not ensured the satisfactory application of the Charter.

5. Part IV of the of the document grounding the complaint is titled “The Violations of the Charter” and endeavours to focus on three specific aspects: Equality monitoring bodies; Representation of women in decision making posts in private companies and; the actual situation with regard to unequal pay for women and men for equal or similar work.

6. It should be noted of course that while a number of domestic statutes regarding equality law

in Ireland are mentioned the Applicant does not offer detail on the legislation and instead simply asserts (at page 16):

“Currently, Ireland fails to comply with the Social Charter with regard to equal pay for women and men for equal, similar or comparable work, because its legislation is not effective to do so.”

7. As with other matters, the complaint states that the Respondent party has failed to meet its obligations and the material basis upon which this generalised claim is made is not articulated.

8. In relation to the Equality monitoring bodies, the Applicant is clearly critical of aspects of the way in which these bodies work but fails to indicate in what respect the Charter provisions are not satisfactorily applied. Instead, the Applicant makes general and unsubstantiated statements, for example (at page 17):

“As a result, labour inspectors tend increasingly not to investigate issues of equal pay and not to file reports of offences liable to result in criminal proceedings or a civil action. This therefore is a political choice.

...

In Ireland women employees are even at considerable risk of being dismissed quite rapidly albeit of course on another pretext, if they demand equal pay for equal work.”

9. In relation to the representation of women in decision-making posts in private companies the main criticism of the Respondent appears to be at page 17 where it is stated:

“None of Ireland’s economic analyses or national development plans treat this source of dynamism as a decisive factor for the future of the economy.”

10. There is no indication of how the Charter provisions are not satisfactorily applied. Furthermore, whether numerous international reports and studies are taken into account in economic analyses and national development plans is not a basis for a collective complaint.

11. In relation to the section on unequal pay for women and men for equal or similar work it should be noted that the majority of documents cited are of general application and do not specifically relate

to Ireland. In effect, what the Applicant has done is list numerous international reports, many which are not specifically relevant to the Respondent and present this as (at page23):

“...clear evidence of a violation of the articles of the Social Charter...”

12. The Applicant organisation has drawn its own conclusions from the various reports and studies it has listed but this does not equate to indicating in what respect the Respondent has not ensured the satisfactory application of the Charter provisions.

Conclusion

13. Article 4 of the European Social Charter (Additional Protocol) is clear. An applicant organisation must indicate in what respect a Respondent State has not ensured the satisfactory application of the Charter.

14. In relation to Article 4, the Explanatory Memorandum refers to the three admissibility conditions as being:

“...deemed sufficiently important to be specifically mentioned in a separate article of the Protocol.”

15. The Committee’s booklet on collective complaints, when listing the admissibility conditions for complaints states (pages 10-11) that:

“In order to be declared admissible, collective complaint must necessarily:

...

- Indicate the extent to which the State has failed to implement the Charter. In particular, the complaint must indicate the point(s) in respect of which the State in question has allegedly failed to comply with the Charter or implemented it inadequately, along with evidence and the relevant arguments, with supporting documents.”

(Emphasis added)

16. It is submitted that the Applicant has failed to adduce “evidence and relevant arguments” in support of the complaint lodged.

17. The Explanatory Report to the Additional Protocol also makes it clear that the collective complaints mechanism is not the primary method for ensuring that states apply the Charter. Paragraph 2 of the explanatory report to the Protocol provides that:

“The system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter”.

18. It is not the purpose of the collective complaints system to trigger an examination of the general implementation (as opposed to an examination of specific implementation) of the Charter which is what, in effect, the Committee is being asked to do here. The collective complaints system exists to focus on specific situations not examined in consideration of a state’s report.

19. Further, there are good practical reasons for requiring that a collective complaint, to be admissible, indicate in what respect a respondent state has not ensured the satisfactory application of the Charter. In the absence of such detail it is difficult if not impossible for a respondent state to know what it is being asked to address. This in turn has a knock on effect on how the Committee proceeds. If no sufficient detail is provided the Committee risks reaching conclusions which can only be of a very general nature and may have little impact.

20. It must be emphasised that this a requirement for the admissibility of an application and is not something which, when brought to an applicant organisation’s attention, can be addressed at a later stage. The consequences of failing to meet this requirement is that the application must be declared inadmissible.

21. For the reasons outlined above, it is submitted that the Applicant has failed to meet the admissibility requirement of indicating in what respect the Respondent has not ensured the satisfactory application of the Charter’s provisions and as a consequence the application should be declared inadmissible.