EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

16 December 2016

Case Document No. 2

University Women of Europe (UWE) v. Norway
Complaint No 135/2016

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 13 December 2016

ATTORNEY GENERAL – CIVIL AFFAIRS

The European Committee of Social Rights
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Your reference	Our reference	Date
13O-2O16 LV/KOG	2016-0866 HRU	13.12.2016

WRITTEN OBSERVATIONS ON ADMISSIBILITY

SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF NORWAY

to

THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

in

University Women of Europe (UWE) v. Norway
(Complaint No. 135/2016)

1 INTRODUCTION

(1) Reference is made to the Deputy Executive Secretary's letter of 27 September 2016 informing the Permanent Representative of Norway to the Council of Europe, Ambassador Astrid Emilie Helle, of the collective complaint submitted by University Women of Europe (hereinafter "UWE") pursuant to Article 5 of the Additional Protocol to the European Social Charter (hereinafter "the Additional Protocol") providing for a system of collective complaints.

(2) The Government has been invited to submit written observations on the admissibility of the complaint by 14 December 2016, according to the letter of the Deputy Executive Secretary of 4 November 2016 extending the original deadline.

(3) In the view of the Government the complaint is inadmissible as the requirements set out in article 4 of the Additional Protocol are not met.

(4) The Government presume that the lodged complaint was accompanied by a power of attorney to prove the competence of the undersigned according to rule 23 of the Rules of the European Committee of Social Rights. If not the complaint shall be deemed inadmissible also on this basis.

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2 ARTICLE 4 OF THE ADDITIONAL PROTOCOL

(5) The Government respectfully submits that the complaint does not satisfy the requirement set out in Article 4 of the Additional Protocol:

> *"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."*

(6) Article 4 must be read together with Article 1 that states that complaints can be made alleging *"unsatisfactory application of the Charter."* According to the Explanatory Report, the introductory sentence in Article 1 *"[E]stablishes the principle of recognition of this right by the Contracting Parties and briefly describes the scope of complaints."*

(7) In the view of the Government Article 4, taken together with Article 1, indicates the scope of complaints: a complaint must specify in what way a State has failed to ensure the satisfactory application of a provision, i.e. in what way the State's performance is unsatisfactory. The Government submits that this requires the complaint to meet minimum requirements of specificity and documentation in order to be admissible.

(8) The Government makes reference to the requirements outlined by the Committee in "Syndicat national des Dermato-Vénérologues v. France", Complaint No. 28/2008. In this case the Committee had been invited by the French trade union SNDV to determine whether the difference in treatment between categories of specialist medical practitioners in private practice regarding the fees they can charge for items of service, and thus their remuneration, amounted to discrimination against one particular category of these practitioners. In paragraph 8 of the decision the Committee stated that the *"facts adduced are not of such a nature as to allow it to conclude that there has been a violation of the right"* as guaranteed in the Revised Charter. Hence, the facts have to be specified and documented to a degree that allows the Committee to consider the complaint held up against the adduced provision of the Revised Charter.

(9) The Government further submits that such a minimum level of specificity and documentation is necessary to allow the Contracting Parties to consider and, if needed, refute complaints lodged, in accordance with the principle of *audi alteram partem.* The principle is fundamental in all tribunals and committees with adjudicative and quasi-adjudicative functions in domestic as well as international law, and also applies to the Committee. A possibility for the Government to consider and, if needed, rebut a complaint is contingent on a certain level of specificity of that claim and is essential if the Collective Complaints Procedure are to fulfil its aim to *"improve the effective enforcement of the social rights guaranteed by the Charter,"* as provided for in the second preambular sentence to the Additional protocol.

(10) The Government respectfully submits that the complaint from UWE does not fulfill the minimum requirements of specificity and documentation, as required.

(11) The Government refers to the fact that a similar complaint has been lodged against all 15 states that have ratified the Additional Protocol. This suggests in itself that the complaint falls short of the minimum requirements of specificity and documentation.

(12) Also, the complaint is drafted in general terms and does not detail which Norwegian

provision, national law or practice that is not in compliance with the Revised Charter. The arguments put forward are not specifically dedicated to the situation in Norway. The 15 complaints are, essentially, equally worded regardless of which Contracting State being the addressee.

(13) Further, the subject of equal pay is broad and complex, and the complaint is directed at the situation for working women *in Europe as such*. The complaint also does not distinguish between the different levels of responsibility deriving from the Charter that weigh on the States. It would for example be of importance to draw a distinction between the public and private sector. It is the Government's contention that the lack of specificity in the complaint – of precise and concrete arguments based on the Norwegian situation – prevents it from describing the situation in Norway on the aspects and criteria that should cause the alleged discrimination.

(14) Moreover, the complainant bases its conclusions on international studies and reports, as annexed to the complaint. Most of these reports are drafted in general terms and are not specifically dedicated to the situation in Norway. The annexes do not provide any precise and concrete arguments based on the Norwegian situation, and the complaint must thus be considered undocumented.

(15) The Government would also like to accentuate that the topic of equal pay for similar or comparable work between a woman and a man does not lend itself to be scrutinized in the abstract. As pointed out by the Committee in "European Federation of Employees in Public Services v. France", Complaint no. 2/1999, paragraph 31, the issues put forward in a complaint must lend themselves to be assessed "in the abstract". That decision (regarding collective bargaining) was dismissed, formally on the merits, by the Committee due to the lack of specificity of the complaint in question. In the view of the Government the same point has merits also with regard to the question of admissibility of the present case: the issues brought forward in the mentioned complaint need to be considered on a concrete, case-by-case, basis. Absent this possibility, the complaint cannot be admitted by the Committee for consideration of the merits.

(16) Based on the above, the Government respectfully submits that the complaint does not satisfy the requirement set out in Article 4 of the Additional Protocol.

3 CONCLUSIONS

(17) For the reasons laid out above the Government respectfully requests the Committee to find the present complaint inadmissible.

(18) In the event that the Committee allows UWE to submit further information and evidence in support of its allegation, the Government asks the Committee to accept further observations on admissibility from the Government.

ATTORNEY GENERAL – CIVIL AFFAIRS

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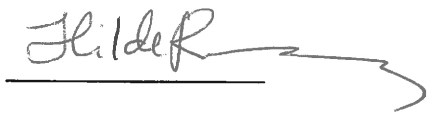
Oslo, 13 December 2016



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