



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

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**Case Document No. 5**

**University Women of Europe v. Italy**  
Complaint No. 133/2016

**OBSERVATIONS BY THE EUROPEAN TRADE UNION  
CONFEDERATION (ETUC)**

Registered at the Secretariat on 3 November 2017



**Collective Complaint**

***University Women of Europe (UWE) v. Italy***

**Complaint No. 133/2016**

**Observations  
by the  
European Trade Union Confederation  
(ETUC)**

(03/11/2017)

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- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations. The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC)<sup>1</sup> but also the Collective Complaints Procedure Protocol (CCPP). However, the ETUC would invite the Government to take the appropriate steps to accept all provisions of the RESC.

## Introduction

- 2 The main content of the complaint is described in the Decision on admissibility of 4 July 2017 and contains mainly two elements:
  - (1) the Gender wage gap,
  - (2) the (under-)representation in decision-making positions within private companies.
- 3 From the very outset, the ETUC would like to highlight that it is strongly committed to achieving equality between women and men. In its Constitution the ETUC clearly states that it
  - will work throughout Europe for [...]
  - the elimination of all forms of discrimination, based on sex, age, colour, race, sexual orientation, nationality, religious or philosophical beliefs or political opinions;
  - the promotion of equal opportunities and equal treatment between men and women; [...]<sup>2</sup>
- 4 The ETUC priorities are currently outlined in the Paris Action Programme (2015-2019) and the ETUC Action Programme on Gender Equality 2016 – 2019, and include in particular:
  - Mainstreaming gender into all ETUC policies;
  - Achieving equal pay between women and men;
  - Eliminating the gender gap in decision-making bodies.<sup>3</sup>
- 5 Against this background, these Observations aim at fulfilling these objectives by providing the European Committee of Social Rights (ECSR or Committee) with as much as possible consistent and comprehensive information on the problems at issue. The Observations will be divided into three parts the first of which will be attributed to the general framework (Part I) whereas the second will deal with the country-specific situation including the relevant international case law concerning the respondent State (Part II) before finally arriving at the Conclusions (Part III).
- 6 At an editorial level, it is indicated that all quotations will be governed by the following principles: they focus on the issues at stake (while still showing the relevant context) and will be ordered chronologically (beginning with the newest text). Emphases in **bold** are added by the ETUC;<sup>4</sup> eventual footnotes are, in principle, omitted. Each time Article 20 of the Charter is mentioned it also includes Article 1§1 of the (First) Additional Protocol which has the same content for those countries which have ratified only the latter provision. Following the Committee's General Introduction to Conclusions 2012, the content of Article 4§3 of the Charter on the right of equal pay is now considered to be included in Article 20 of the Charter.

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<sup>1</sup> Unless stated otherwise, Articles without further indication relate to the 1996 RESC.

<sup>2</sup> Extract of the Preamble of the [ETUC Constitution](#).

<sup>3</sup> See for further information: <https://www.etuc.org/issue/gender-equality>.

<sup>4</sup> Where the original text contains emphases they are highlighted in *italics*.

Therefore, each time these Observations refer to Article 20 of the Charter in relation to equal pay they include also Article 4§3 of the Charter unless otherwise specified.

## I. General framework

- 7 As Part I, the description of the 'General framework' is setting the foundation for the country-specific assessment in Part II.

### A. *International law and material*

- 8 The importance and legal significance of international standards and their interpretation and application<sup>5</sup> is widely recognised. Accordingly, the collective complaint refers in several respects to international standards and the respective case law (in particular CEDAW). Nevertheless, the ETUC would like to add pertinent references to international law and material to the description provided in the complaints because all following International Organisations attribute a great importance to the principle of equality between men and women be it in their standard-setting, the respective case law or in other fields like research, projects, studies etc.
- 9 Unless stated otherwise the respondent State has ratified all the following instruments referred to below.<sup>6</sup>

#### 1. United Nations

- 10 The United Nations (UN) provide for a wide-ranging set of standards (see below a) to d)) and further pertinent material (see below e)).

##### a) *Universal Declaration of Human Rights*

- 11 The main provisions of the Universal Declaration of Human Rights (UDHR) relating to equality between men and women may be quoted as follows:

*Article 1*

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

*Article 23*

[...] (2) Everyone, without any discrimination, has the right to **equal pay for equal work**.

##### b) *International Covenant on Civil and Political Rights*

###### (1) Text

- 12 The main provisions of the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> relating to equality between men and women might be quoted as follows:

*Article 2*

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<sup>5</sup> As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

<sup>6</sup> As legally non-binding instruments, this list does obviously not include the UDHR nor Recommendations nor any 'Further pertinent material'.

<sup>7</sup> Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976.

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

*Article 3*

The States Parties to the present Covenant undertake to ensure the **equal right of men and women** to the enjoyment of all civil and political rights set forth in the present Covenant. [...]

*Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

(2) General interpretation

13 In its General Comment No. 28 on Article 3 ICCPR<sup>8</sup>, the competent organ to interpret the ICCPR, the Human Rights Committee (CCPR), stated i.a.

31. [...] The Committee has also often observed in reviewing States parties' reports that a large proportion of women are employed in areas which are not protected by labour laws and that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to **equal pay for work of equal value**. States parties should **review their legislation and practices** and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by **prohibiting discrimination by private actors in areas such as employment**, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.

*c) International Covenant on Economic, Social and Cultural Rights*

14 As complementary to the ICCPR the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>9</sup> provides in particular for the protection against discrimination (see below (1)) and for social rights. Its competent organ, the Committee on Economic, Social and Cultural Rights (CESCR) to interpret this instrument has developed a case law in this respect (see below (2)).

(1) Text

*Article 2*

[...] 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status [...]

*Article 3*

The States Parties to the present Covenant undertake to ensure the **equal right of men and women** to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

*Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

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<sup>8</sup> Adopted: 29.03.2000 (replacing general comment No. 4).

<sup>9</sup> Adopted by resolution 2200A (XXI) of 16.12.1966; entry into force 03.01.1976.

- (i) Fair wages and **equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men**, with equal pay for equal work; [...]
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; [...]

(2) General interpretation

15 Recently, in its General Comment No. 23 concerning Article 7 ICESCR<sup>10</sup> CESCR defined in more detail the content of para. (a)(i) as follows:

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

12. The extent to which equality is being achieved requires an **ongoing objective evaluation** of whether the work is of equal value and whether the remuneration received is equal. It should cover a broad selection of functions. Since the focus should be on the “value” of the work, evaluation factors should include **skills, responsibilities and effort required by the worker, as well as working conditions**. It could be based on a comparison of rates of remuneration across organizations, enterprises and **professions**.

13. Objective job evaluation is important to **avoid indirect discrimination** when determining rates of remuneration and comparing the relative value of different jobs. For example, a distinction between full-time and part-time work — such as the payment of bonuses only to full-time employees — might indirectly discriminate against women employees if a higher percentage of women are part-time workers. Similarly, the objective evaluation of the work must be free from gender bias. [...]

*d) Convention on the Elimination of All Forms of Discrimination against Women*

16 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>11</sup> can be considered as the universal core convention on equality between men and women. It provides also for specific protection in employment (see below (1)) and for social rights. Its competent organ, the Committee on the Elimination of Discrimination against Women (CEDAW) to interpret this instrument has developed a case law in this respect (see below (2) and (2)(b)).

(1) Text

*Article 1*

For the purposes of the present Convention, the term "**discrimination against women**" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

*Article 2*

States Parties condemn discrimination against women in all its forms, agree to pursue by **all appropriate means** and without delay a policy of eliminating discrimination against women and, to this end, undertake:

<sup>10</sup> [General Comment No. 23](#) (2016) on the right to just and favourable conditions of work (article 7 ICESCR); see General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

<sup>11</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#), 18.12.1979.



- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;**
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

#### *Article 3*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the **full development and advancement of women**, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. [...]

#### *Article 11*

1. 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:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (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; [...]

## (2) General interpretation

### (a) *Concerning the Gender pay gap*

17 As early as 1989 in its General Recommendation No. 13<sup>12</sup> the CEDAW defined in more detail the content of 'Equal remuneration for work of equal value' by recommending to the States Parties i.a. that:

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

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

<sup>12</sup> [General recommendation No. 13: Equal remuneration for work of equal value](#), CEDAW, Eighth session (1989)), contained in document A/44/38. Further General Recommendations might be relevant, such as

- No. 16 (1991) unpaid women workers in rural and urban family enterprises,
- No. 28 (2010) The Core Obligations of States Parties under Article 2 of the CEDAW,
- No. 33 (2015) on women's access to justice.

(b) *Concerning the (under-)representation of women in decision-making bodies in enterprises*

18 In more recent times the CEDAW has also criticised the (under-)representation of women in decision-making bodies in enterprises. Although it has not (yet) provided a 'General Recommendation' on this issue it appears important to highlight the following extracts of 'Concluding Observations' on certain countries which have not ratified the CCPP, whereas extracts of similar CEDAW conclusions on countries which have ratified the CCPP are quoted in Part II.A. of the respective ETUC Observations.

(i) Estonia (2016)<sup>13</sup>

28. [...] The Committee is also concerned about: [...]

(d) The **significant underrepresentation of women in management positions in private companies**; [...]

29. *The Committee recommends that the State party: [...]*

(d) *Increase the representation of women in **management positions in private companies**, including through temporary special measures; [...]*

(ii) Slovakia (2015)<sup>14</sup>

28. The Committee notes the amendment to the Labour Code in 2011 to provide for the equal treatment of women and men in employment and an increase in the representation of women on corporate boards, but is concerned:

(a) That significant horizontal and vertical gender segregation exists in the labour market, including the **persistently low representation of women compared with men in economic decision-making positions**, such as on the supervisory board of companies and in executive positions, and that the size of the gender pay gap remains large, women's high levels of education notwithstanding; [...]

29. *The Committee recommends that the State party: [...]*

(b) *Enhance measures to achieve the **equal and full participation of women in decision-making in the economic sphere, in particular on the management and supervisory boards of public and private companies**; [...]*

(iii) Spain (2015)<sup>15</sup>

28. The Committee [...] is particularly concerned about the following issues: [...]

(b) The **low representation of women in managerial and decision-making positions and on boards of directors** (18.2 per cent) and that neither Organic Law No. 3/2007 on effective equality for men and women nor Law No. 31/2014 amending the Corporations Act provides sanctions for the non-enforcement of the required gender balance on the boards of directors of large companies; [...]

29. *The Committee recommends that the State party: [...]*

(d) *Take measures to achieve the equal and full participation of women **in decision-making in the economic sphere, in particular on the boards of directors of large companies, by introducing mandatory quotas***;

(iv) Denmark (2015)<sup>16</sup>

29. The Committee welcomes the establishment in 2011 of a tribunal for equal pay, but remains concerned at: [...]

<sup>13</sup> [Concluding observations on the combined fifth and sixth periodic reports of Estonia](#), CEDAW/C/EST/CO/5-6 – 18.11.2016.

<sup>14</sup> [Concluding observations on the combined fifth and sixth periodic reports of Slovakia](#), CEDAW/C/SVK/CO/5-6 – 25.11.2015.

<sup>15</sup> [Concluding observations on the eighth periodic report of Spain](#), CEDAW/C/ESP/CO/7-8, 29.7.2015.

<sup>16</sup> [Concluding observations on the eighth periodic report of Denmark](#), CEDAW/C/DNK/CO/8, 11.03.2015.

(c) The absence of clearly defined sanctions for companies that fail to meet **targets for equal gender representation**; [...]

30. *The Committee recommends that the State party: [...]*

(c) *Provide for adequate and **clearly defined sanctions for companies that fail to meet targets for equal gender representation and provide specific mechanisms for the prompt enforcement of such sanctions**; [...]*

#### e) *Further pertinent material*

The importance of the principle of equality between men and women is furthermore underlined by the inclusion in the [UN 2030 agenda](#). In its Sustainable Development Goals (SDG) Goal 5. ('Achieve gender equality and empower all women and girls') contains i.a. the following elements:

5.1 **End all forms of discrimination against all women** and girls everywhere [...]

5.5 **Ensure women's full and effective participation** and equal opportunities for leadership at **all levels of decision- making** in political, **economic** and public life [...]

5.c Adopt and strengthen **sound policies and enforceable legislation** for the promotion of gender equality and the empowerment of all women and girls at all levels [...]

## 2. International Labour Organisation

19 Out of the eight core Conventions of the International Labour Organisation (ILO), the two anti-discrimination Conventions No. 100 and 111 are of specific relevance for this collective complaint.

#### a) *Convention No. 100<sup>17</sup>*

##### (1) Text

###### *Article 1*

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.

###### *Article 2*

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

###### *Article 3*

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

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<sup>17</sup> [Equal Remuneration Convention](#), 1951 (No. 100). Adoption: 29.06.1951, entry into force: 23.05.1953 - Status: Up-to-date instrument (Fundamental Convention).

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

*Article 4*

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

(2) General interpretation

(a) *General Survey 2012*

20 In its General Survey 2012,<sup>18</sup> the Committee on the Application of Conventions and Recommendations (CEACR) described the requirements which derive from Convention No. 100 in relation to the gender pay gap as follows:

Gender pay gap

668. Pay differentials remain **one of the most persistent forms of inequality between women and men**. Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains **one of the most obvious examples of structural gender discrimination**. The gender pay gap varies from country to country, and between different sectors within a country. Globally, women earn approximately 77.1 per cent of what men earn (a pay gap of 22.9 per cent) though in some countries women earn considerably less. If wages of part-time workers are included in the calculation, the gap can increase to much higher levels.

669. Many countries have made progress in reducing the pay gap, though in others it has stagnated for many years, or even increased. Even where gender pay differences are **narrowing**, they are doing so **extremely slowly**: at the current rate it is estimated that another 75 years will be needed to bridge the gap. *The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration. [...]*

*Equal value: The cornerstone of the Convention*

[...] 673. *The concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). **Often "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of "work of equal value" is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.***

674. "Value" while not defined in the Convention, refers to the worth of a job for the purpose of computing remuneration. "**Value**" in the context of the Convention indicates that **something other than market forces** should be used to ensure the application of the principle, as market forces may be inherently gender-biased. [...]

675. While *Article 1* indicates what cannot be considered in determining rates of remuneration, *Article 3* presupposes the use of appropriate techniques for **objective job evaluation** to determine value, comparing factors such as skill, effort, responsibilities and working conditions.

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<sup>18</sup> Report III(1B): [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, 2012.

Comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias. The Committee recalls that the principle has been applied to compare the remuneration received by men and women **engaged in different occupations**, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men). [...]

679. *Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of “work of equal value”, and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee again urges the governments of those countries to take the necessary steps to amend their legislation. Such **legislation should** not only provide for equal remuneration for equal, the same or similar work, but also **address situations where men and women perform different work that is nevertheless of equal value.*** [...]

Comparing jobs, determining value

695. *The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions. Article 3 also makes it clear that differential rates between workers are compatible with the principle of the Convention if they correspond, without regard to sex, to differences determined by such evaluation.* [...]

*Scope of comparison*

697. Application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers. **Ensuring a broad scope of comparison is essential for the application of the principle of equal remuneration** given the continued prevalence of occupational sex segregation. [...]

698. The reach of **comparison** between jobs performed by women and men **should be as wide as possible**, in the context of the level at which wage policies, systems and structures are coordinated. As effective application of the principle of the Convention is needed, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient. In certain countries the scope of comparison is limited to the same employer in legislation. **The European Committee of Social Rights has also considered under the European Social Charter that “[a]s comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that „the possibility to look outside an enterprise for an appropriate comparison should exist where necessary” (Conclusions XIII-1, p. 121)**”. Similarly, the Committee of Experts has also asked certain governments to extend the scope of comparison beyond the enterprise. [...]

Objective job evaluation methods

[...] 701. *Whatever **methods** are used for the objective evaluation of jobs, particular care **must be taken to ensure that they are free from gender bias**: it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly.* Often skills considered to be “female”, such as manual dexterity and those required in the caring professions, are undervalued or even overlooked, in comparison with traditionally “male” skills, such as heavy lifting. In addition, if job evaluation is to make a positive contribution to resolving wage discrimination and promoting equality, there must be a legal and administrative framework enabling workers to claim equal remuneration on the basis of the assessed value of their

jobs, together with a right to claim redress when job evaluation systems have been found to be discriminatory.

702. A number of analytical job evaluation methods have been developed, for example: in *Sweden*, "Steps to Pay Equity"; in *Switzerland*, the ABAKABA and EVALFRI methods; and in *Spain* the ISOS methods. With respect to the ABAKABA method, the Committee has noted that it takes into consideration characteristics considered to be masculine and feminine, and includes criteria such as repetitiveness and precision of movement, responsibility for the life of others, responsibility for the environment, the number of work interruptions (for example in secretarial and clerical work), empathy and the ability to organize, which are often linked to occupations in which women are predominantly employed. [...]

b) *Convention No. 111*<sup>19</sup>

(1) Text

*Article 1*

1. For the purpose of this Convention the term *discrimination* includes

(a) **any distinction**, exclusion or preference made on the basis of race, colour, **sex**, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; [...]

3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. [...]

*Article 3*

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice [...]

(b) to enact such legislation [...];

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; [...]

(2) General Interpretation

21 In its General Survey 2012,<sup>20</sup> the CEACR described the requirements which derive from Convention No. 100 in relation equality between men and women as follows:

(a) *General Survey 2012*

Chapter 3 - Equality of opportunity and treatment in employment and occupation (Convention No. 111)

Introduction

731. [...] *As a first step, it is essential to acknowledge that no society is free from discrimination and that **continuous action is required** to address it.*

732. [...] *The implementation of the national equality policy presupposes the adoption of a range of specific and concrete measures, including in **most cases the need for a clear and comprehensive legislative framework**, and ensuring that the right to equality and non-discrimination **is effective in practice**. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.* [...]

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<sup>19</sup> [Discrimination \(Employment and Occupation\) Convention](#), 1958 (No. 111), Convention concerning Discrimination in Respect of Employment and Occupation. Adoption: 25.06.1958, entry into force: 15.06.1960 - Status: Up-to-date instrument (Fundamental Convention).

<sup>20</sup> See note 18.

Thematic issues

*Defining discrimination*

743. *Clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur. [...] Any discrimination – in law or in practice, direct or indirect – falls within the scope of the Convention.*

Direct and indirect discrimination

744. Direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds. [...]

745. **Indirect discrimination** refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job. In referring to the “effect” of a distinction, exclusion or preference, it is clear that intention to discriminate is not an element of the definition in the Convention, which covers all discrimination **irrespective of the intention of the author** of a discriminatory act. The Convention also covers situations in which inequality is observed in the **absence of a clearly identifiable author**, as in some cases of indirect discrimination or occupational segregation based on sex. Challenges related to structural discrimination therefore need to be addressed under the Convention. [...]

*Grounds of discrimination: An evolving area*

[...]

Sex discrimination and gender equality

782. Under the Convention, sex discrimination includes distinctions based on the biological characteristics, as well as **unequal treatment arising from socially constructed roles** and responsibilities assigned to a particular sex (gender). Gender roles and responsibilities are affected by age, race, class, ethnicity and religion, and by the geographical, economic and political environment. [...]

783. *The protection against discrimination applies to both men and women, although considerable inequalities, in law and in practice, exist to the detriment of women. Despite the requirement under the Convention to repeal discriminatory legal provisions, laws discriminating directly or indirectly against women have not yet been relegated to the past. Women are also over-represented in informal and atypical jobs, including part-time jobs, face greater barriers in gaining access to posts of responsibility, and continue to bear the unequal burden of family responsibilities. Stereotyped assumptions regarding women’s aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs, continue to lead to the segregation of men and women in education and training, and consequently in the labour market.*

### 3. Council of Europe

22 The Council of Europe (CoE) is characterised by two main human rights instruments, the European Convention on Human Rights (ECHR, see below a)) and the European Social Charter (ESC, see below b)) which is at the very core of this complaint. However, there are also other relevant documents (see below c)).

#### a) *European Convention on Human Rights*

23 In its fundamental Article 14, the ECHR<sup>21</sup> prohibits discrimination<sup>22</sup> in the following terms:

<sup>21</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>22</sup> See as joint publication by the ECtHR and the Fundamental Rights Agency of the EU (FRA) the ‘[Handbook](#) on European non-discrimination law’ developing the related ECHR/EU case-law and

*Article 14 - Prohibition of discrimination*

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

However, this protection requires that the right referred to falls in the ambit of one of the rights enshrined in the Convention or its Protocols. As far as equal pay is concerned the sole Convention right could possibly be Article 1 of Protocol No. 1 (Protection of Property).

- 24 This lack of protection against discrimination in general has been closed by the adoption of Protocol No. 12,<sup>23</sup> but it still lacks ratification to a large degree.<sup>24</sup>

*Article 1 - General prohibition of discrimination*

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

- 25 So far, no cases or ECtHR's rulings on equal pay are known.

*b) European Social Charter (ESC)<sup>25</sup>*

(1) Text

*Article 4 – The right to a fair remuneration*

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: [...]

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

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

*Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

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

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

*Article E – Non-discrimination*

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

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covering the context and background to discrimination categories and defences, the scope of the law and the grounds protected ([update](#), July 2010 – December 2011).

<sup>23</sup> Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.177, 04/11/2000.

<sup>24</sup> Up to date 18 CoE Member States have ratified and 20 further Member States have signed Protocol No. 12. Out of the 15 CoE Member States having ratified the CCPP six have either ratified (i.e. Croatia, Cyprus, Finland, Netherlands, Portugal and Slovenia) or signed this Protocol (i.e. Belgium, Czech Republic, Greece, Ireland, Italy and Norway) whereas three Member States (i.e. Bulgaria, France and Sweden) have refrained from opting for one of the two alternatives.

<sup>25</sup> [European Social Charter \(Revised\)](#), 03.05.1996, European Treaty Series - No. 163.



(2) Compilation of case law (Digest 2008)

26 The 'Digest of the Case Law of the European Committee of Social Rights' (Digest 2008) compiles the main principles deriving from the ECSR's case law based on Statements of Interpretation, Conclusions or Decisions.

27 Concerning the principle of equal pay for work of equal value as enshrined in Article 4§3 of the Charter, the Digest 2008 states the following:

(a) *Article 4§3*

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex. This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case-law under Article 20 (see *infra*) applies *mutatis mutandis* to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

The situation as regards equal pay in countries which have accepted both Article 20 and Article 4§3 is examined exclusively under Article 20 and these countries are no longer required to submit a report on the application of Article 4§3.

The principle of equal pay

Women and men are entitled to "equal pay for work of equal value". This means that the equal pay principle applies to the same work and to "mixed jobs", that is ones performed by both women and men, but also to work of the same value.

The principle of equality should cover **all the elements of pay**, that is basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

It must also apply between full-time and part-time employees, covering the calculation of **hourly wages**, pay increases and the components of pay.

Guarantees of enforcement

*Legislative means*

The right of women and men to "equal pay for work of equal value" must be expressly provided for in legislation.

As far as setting wage levels is concerned, states are free to choose their own methods and can treat this as a matter to be decided by collective bargaining. Domestic law must however **ensure that violations of the principle of equal pay will be sanctioned** and lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the **state must intervene** using legal wage-fixing methods or any other appropriate means.

*Judicial safeguards*

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court.

Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.

## Methods of classification and comparison and other measures

Appropriate classification methods must be devised enabling to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force.

Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison. The Committee views this as a crucial means of ensuring that job appraisal systems are effective under certain circumstances, particularly in companies where the workforce is largely, or even exclusively, female.

States must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

28 As regards more generally the principle of equality between men and women provided for in Article 20 of the Charter, the Digest 2008 states the following:

### (b) *Article 20*

#### Definitions and scope

Article 20 guarantees the right to equality at **all stages of working life** – access to employment, remuneration and other working conditions, including dismissal and other forms of detriment, vocational training and guidance and promotion. These words give Article 20 the status of *lex specialis* in relation to Article 1§2 of the Charter, which prohibits all discrimination at work on whatever ground.

The **right to equal pay** without discrimination on the grounds of sex is guaranteed by Article 4§3 and the relevant specific case-law is presented under this article (see above): The situation as to equal pay in States party which have accepted Articles 4§3 and 20 is examined under Article 20 only. Consequently, these States are no longer required to submit a report on the application of Article 4§3. [...]

Discrimination in breach of the Charter is constituted by a difference in treatment between **people in comparable situations** which does not pursue a legitimate aim and is not based on objective and reasonable grounds. In determining whether a legitimate aim is being pursued and the measures taken are reasonably proportionate, the Committee applies Article G.

**Indirect discrimination** occurs where a rule, identical for everyone, disproportionately affects men or women without a legitimate aim. Equal treatment of full-time and part-time employees is considered from this angle in particular in respect of social security issues. [...]

The principle of equality applies to all employees, in both the **private and public sectors**.

#### Means of enforcement

##### *Legal framework*

The right of women and men to equality **must be guaranteed by a law**. The Charter requires “states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.” It is not sufficient merely to state the principle in the Constitution. [...]

It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, employment contracts or firms' internal regulations that is incompatible with the principle of equal treatment.

#### *Right of appeal*

National legislation must provide for appropriate and **effective remedies** in the event of alleged discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body.

The **burden of proof must be shifted**. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice and hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.

By analogy with the case-law in relation to Article 1§2, a number of **other legal steps should be taken** to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals or setting up an independent body to promote equal treatment and provide legal assistance to victims.

#### *Adequate compensation*

Anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is **sufficient to make good the damage suffered by the victim and act as a deterrent to the offender**.

Adequate compensation means:

- **reinstatement** or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- **compensation** proportionate to the damage suffered, i.e. to cover **pecuniary and non-pecuniary damage**, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

In accordance with these principles, the Committee considers that compensation should **not** be subject to an **upper limit** as this prevents it from being proportionate to the damage suffered and hence adequate.

When assessing the level of compensation, the Committee takes account of **whether it is high enough to prevent employers from re-offending**. For this purpose, it also considers any other administrative, civil or criminal penalties imposed on employers.

#### *Protection against reprisals*

Employees who try to enforce their right to equality must be **legally protected against any form of reprisals from their employers**, including not only dismissal, but also downgrading, changes to working conditions and so on. National legislation must provide for the same consequences where an employee is a victim of reprisal measures as those described above in the sections on appeal procedures and compensation. [...]

Particular rights of women

[...]

#### *Equal opportunities and positive measures*

Since "the aim and purpose of the Charter, being a human rights protection instrument, is to **protect rights not merely theoretically, but also in fact**" and conformity with the Charter cannot be ensured solely by the operation of legislation, states must take practical steps to promote equal opportunities.

Appropriate measures include:

- adopting and implementing **national equal opportunities action plans**;
- requiring individual undertakings to draw up enterprise or **company plans** to secure greater equality between women and men; [...]

There is no case-law on discrimination by results, such as the systematic granting of priority to women in sectors of activity in which they are under- represented.

### (3) Statement of interpretation

29 Following the Digest 2008 the ECSR has adopted a specific Statement of Interpretation on 'equal pay comparisons' in the framework of Conclusions 2012:<sup>26</sup>

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to **make pay comparisons across companies**. It notes that **at the very least**, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which **statutory rules** apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a **collective works agreement** or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down **centrally** for more than one company within a **holding** (company) or conglomerate.

### (4) Conclusions (2016) on (under-)representation of women in decision-making functions within the private sector

30 In more recent times the Committee has shown an increasing interest in the representation of women in decision-making functions. Indeed, it asked for example [Armenia](#), [Romania](#), [Turkey](#) and [Ukraine](#) as well as [Belgium](#) to provide information i.a. on (increasing) women's participation decision-making positions or posts or noted progress in relation to women's participation in decision making in [Ireland](#).

### c) Further pertinent material

31 The Committee of Ministers has adopted several Recommendations<sup>27</sup> which are in part relevant for the issues at stake.

- *Recommendation No. R(85)2 on legal protection against sex discrimination* exhorts member states to take or reinforce measures for the promotion of equality between women and men, including through legislation in the field of employment, social security and pensions, taxation, civil law, the acquisition and loss of nationality and political rights. The Appendix to the Recommendation refers to the need to give consideration to the adoption of special temporary measures designed to accelerate the realisation of *de facto* equality between men and women in those areas where inequalities exist. In addition, member states are encouraged to adopt suitable machineries and legislation containing effective remedies and sanctions in order to discourage discrimination.
- [Recommendation No. R \(98\)14 on gender mainstreaming](#) calls on member states to create an enabling environment and facilitate conditions for the implementation of gender mainstreaming in the public sector on the basis of the Council of Europe Report on Gender Mainstreaming. The report sets out the conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.
- [Recommendation Rec\(2007\)17 on gender equality standards and mechanisms](#) provides an extensive list of measures to achieve gender equality in practice, taking into account human rights and the integration of a gender perspective in legislation in all sectors. It recommends specific gender equality standards in private and family life, education, science and culture, economic life, social protection, health, including sexual and reproductive matters, violence against women, trafficking in human beings, conflict and post-conflict situations and specific situation of vulnerable groups exposed to multiple discrimination. The Recommendation also puts forward strategies, mechanisms and tools to achieve gender equality, such as the

<sup>26</sup> The same applies for Conclusions XX-1 - Statement of interpretation - Article 1 Additional Protocol.

<sup>27</sup> For the compilation see <https://rm.coe.int/168058feef>.

implementation of complementary strategies; strong institutional mechanisms/national machinery for gender equality; studies and instruments to measure and evaluate progress on the situation of women and men, and the establishment of co-operation and partnerships.

#### 4. European Union (EU)

32 Equality between women and men is one of the European Union's founding values. It goes back to 1957 when the principle of equal pay for equal work became part of the Treaty of Rome<sup>28</sup> as primary law<sup>29</sup> and later further developed also in secondary law (see below a)). The Court of Justice of the European Union (CJEU) has developed a very rich jurisprudence so far (see below b)). There is also further pertinent material for the purpose of dealing with this complaint (see below c)).

##### a) *Legislative framework*

###### (1) Primary Law

33 With the entry into force of the Treaty of Lisbon in 2009 several sources are relevant:

34 The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States by virtue of Article 6(1)(3) of the Treaty on the European Union (TEU), provides i.a.:

###### *Article 21 - Non-discrimination*

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

###### *Article 23 - Equality between women and men*

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

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

35 Moreover, the principle is enshrined in the founding values of the EU:

###### *Article 2*

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

36 The Treaty on the Functioning of the European Union (TFEU) lays down the 'gender mainstreaming principle:

###### *Article 8<sup>30</sup>*

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

37 In the Title on 'Social Policy' a specific article is devoted to the principle of equality between men and women, in particular in relation to 'equal pay'.

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<sup>28</sup> See for further details <http://ec.europa.eu/justice/gender-equality/>.

<sup>29</sup> Art. 119 EC-Treaty.

<sup>30</sup> (ex Article 3(2) TEC).

*Article 157*<sup>31</sup>

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

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

Equal pay without discrimination based on sex means:

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

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

(2) Secondary law

- 38 After several directives starting in 1975 the actual secondary legislative framework is defined by Directive 2006/54. In Chapter 1 ('Equal pay') of Title II Article 4 provides:

*Article 4 - Prohibition of discrimination*

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

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

Concerning the Horizontal Provisions in Title III, Chapter 1 on 'Remedies and enforcement' is of particular importance.

- 39 At least in one specific sector [the Capital Requirements Directive \(2013/36/EU\)](#)<sup>32</sup> secondary legislation addresses directly the female (under-)representation:

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

*Article 88*

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

*Article 91* [...]

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

b) *General interpretation*

- 40 One of the longest-standing human rights issues the CJEU is dealing with is the principle of equal pay and later the principle of equality between men and women. It has developed an

<sup>31</sup> (ex Article 141 TEC ; the first version being Article 119 EEC Treaty).

<sup>32</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

important corpus of jurisprudence in this respect.<sup>33</sup> As very important cases one might refer to the leading case [Defrenne II](#) (1976) and, for example, also to the [Enderby](#) (1993) judgement.

*c) Further pertinent material*

(1) EU Institutions

41 In aiming at giving social rights a new impetus the *Commission* has adopted a [Recommendation on 'The European Pillar of Social Rights'](#) (April 2017). Its Principle No. 2 refers to:

*Gender equality*

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

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

42 In a more specific [Recommendation on strengthening the principle of equal pay between men and women through transparency](#) (2014)<sup>34</sup> the Commission had stated the respective principles.

43 In a [Communication](#) (2013)<sup>35</sup> on the application of Directive 2006/54 the Commission concluded:

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

44 The *European Parliament* (EP) has a long-standing tradition to call for effective implementation of the principle of equality between men and women. Specifically, on the issue of equal pay the EP adopted a [Resolution](#) (2012)<sup>36</sup> with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value. Most recently, it has adopted [Resolution](#) (2017)<sup>37</sup> on women's economic empowerment in the private and public sectors in the EU.

45 The Commission offers additional information on specific websites on [Gender equality](#) in general and on the [Gender pay gap](#) and the [Gender balance in decision-making positions](#) including its proposed 40% objective for the representation of women on Boards.

(2) Other bodies

46 Without being exhaustive and besides the Fundamental Rights Agency of the EU (FRA) which generally deals with human rights issues, the importance the EU attributes to the question of equality between men and women is shown by the creation of the specific body called

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<sup>33</sup> See, for example, a [Compilation of case law on the equality of treatment between women and men and on non-discrimination in the European Union](#) (3<sup>rd</sup> edition, completed in July 2009), complemented by a further '[Discrimination and Gender equality cases overview](#)' (until April 2011); relevant case law since 2011 might be found in the data-base of the CJEU: [list of cases under Article 157 TFEU](#).

<sup>34</sup> C(2014) 1405 final, 07.03.2014.

<sup>35</sup> COM(2013) 861 final, 06.12.2013, p. 7.

<sup>36</sup> [\(2011/2285\(INI\)\)](#), 24.05.2012.

<sup>37</sup> [\(2017/2008\(INI\)\)](#), 03.10.2017.

European Institute of Gender Equality (EIGE). Although created as a network of national equality institutions the Equinet contributes to the promotion of equality at EU level.<sup>38</sup>

(a) *Gender pay gap*

47 Specialised bodies or organisations also deal with these problems and try to contribute to overcome them. Recently, *Equinet* has published a report '[A comparative analysis of gender equality law in Europe 2016](#)' summarizing the situation i.a. as follows:

Unfortunately, despite this legal framework, the difference between the remuneration of male and female employees remains one of the great concerns in the area of gender equality: on average, women in the EU earn 16.3 % less than men, and progress has been slow in closing the gender pay gap. The differences can be partly explained by factors other than discrimination: e.g. traditions in the career choices of men and women; the fact that men, more often than women, are given overtime duties, with corresponding higher rates of pay; the gender imbalance in the sharing of family responsibilities; glass ceilings; part-time work, which is often highly feminised; job segregation etc. However, **another part of the discrepancies cannot be explained except by the fact that there is pay discrimination**, which the principle of equal pay aims to eradicate.

48 In the Conclusions of its [2017 Report on equality between women and men in the EU](#) Equinet states:

Over the last years, the gaps in pay, employment and working hours have been plateauing. At this rate of change, it will **take more than a century to close** the overall **gender gap** in earnings.

(b) *(Under-)representation in decision-making bodies within private companies*

49 The organisation [European Women on Boards](#) (EWoB) has published a report on [Gender Diversity on European Boards](#) (Realizing Europe's Potential: Progress and Challenges, April 2016)<sup>39</sup> containing i.a. statistics as well as legal and other frameworks.

*B. Further pertinent material*

50 As the Committee also refers to other pertinent (e.g. Eurostat) material it appears useful to provide additional information in this respect.

1. *Concerning the Gender pay gap*

51 To measure the extent of the Gender pay gap in relation to the countries concerned the main point is reliable statistical evidence. Thus, the most important statistical source (also referred to by the Committee) is Eurostat.<sup>40</sup> It provides - in a given period of time - the relevant data:

**Gender pay gap in unadjusted form<sup>41</sup>**

GEO/TIME	2010	2011	2012	2013	2014	2015
European Union (28 countries)	16,4	16,9	17,3	16,8	16,7	16,3
Belgium	10,2	9,4	8,3	7,5	6,6	6,5

<sup>38</sup> All those bodies offer websites comprising important additional information.

<sup>39</sup> Further information might be drawn from <http://european.ewob-network.eu/projects/ewob-studies/>.

<sup>40</sup> Its specific advantage for the examination of all 15 cases lies in the fact that Norway is also included.

<sup>41</sup> by NACE Rev. 2 activity (Industry, construction and services (except public administration, defense, compulsory social security) - structure of earnings survey methodology [earn\_gr\_gpgr2] - Extract – in alphabetical order.



GEO/TIME	2010	2011	2012	2013	2014	2015
Bulgaria	13,0	13,2	15,1	14,1	14,2	15,4
Croatia	5,7	3,4	2,9	9,0	10,4	:
Cyprus	16,8	16,1	15,6	14,9	14,2	14,0
Czech Republic	21,6	22,6	22,5	22,3	22,5	22,5
Finland	20,3	19,1	19,2	18,8	18,4	17,3
France	15,6	15,7	15,6	15,5	15,5	15,8
Greece	15,0	:	:	:	:	:
Ireland	13,9	12,7	12,2	12,9	13,9	:
Italy	5,3	5,7	6,5	7,0	6,1	5,5
Netherlands	17,8	18,6	17,6	16,5	16,1	16,1
Norway	16,1	15,7	14,7	15,5	14,5	14,9
Portugal	12,8	12,9	15,0	13,3	14,9	17,8
Romania	8,8	9,6	6,9	4,9	4,5	5,8
Slovenia	0,9	3,3	4,5	6,3	7,0	8,1
Sweden	15,4	15,6	15,5	14,6	13,8	14,0

<http://appsso.eurostat.ec.europa.eu/nui/setupDownloads.do>

52 This statistic shows that for all countries concerned by the complaints for which information is available the minimum Gender pay gap still lies above 5.5 %. That means that for all countries the principle of equal pay for work of equal value is not ensured. . This is even more true taking into account the lack of clarity in relation to the calculation (e.g. to which extent did they - or at least should they - imply other discriminatory elements like career differences leading to the increase of the pay gap) or in relation to the data basis (e.g. undocumented work or informal economy, both sectors in which the gender pay gap will most probably be even higher).

## 2. Concerning the (under-)representation in decision-making positions within private companies

53 In its updated 'Data table' the European Institute for Gender Equality (EIGE) provides the following information:<sup>42</sup>

### Largest listed companies: presidents, board members, (non-)executives and CEOs<sup>43</sup>

Countries	Men (%)	Women (%)	Gap (points)
EU28	75.4	24.6	50.8
Belgium	70.6	29.4	41.2
Bulgaria	87.2	12.8	74.4
Croatia	77.4	22.6	54.8
Cyprus	89.3	10.7	78.6
Czech Republic	82.9	17.1	65.8
Finland	67.7	32.3	35.4
France	57.9	42.1	15.8
Greece	90.7	9.3	81.4
Ireland	82.7	17.3	65.4

<sup>42</sup> Extract – in alphabetical order.

<sup>43</sup> [2017-B1; All countries; Men, Women; PC; Members; All sectors](#) [Extract]

Countries	Men (%)	Women (%)	Gap (points)
Italy	67.1	32.9	34.2
Netherlands	69.8	30.2	39.6
Norway	56.0	44.0	12
Portugal	84.5	15.5	69
Slovenia	79.0	21.0	58
Sweden	64.5	35.5	29

[http://eige.europa.eu/gender-statistics/dgs/indicator/wm\\_idm\\_bus\\_bus\\_wmid\\_comp\\_compbm](http://eige.europa.eu/gender-statistics/dgs/indicator/wm_idm_bus_bus_wmid_comp_compbm)

54 This statistic illustrates that only two countries achieve the Commission's proposed objective (40%, see above, para. 45). However, this data only refers to 'largest listed companies' thus leaving out the quantitatively much more important part of the other 'listed companies' as well as non-listed companies. Therefore, it is to be assumed that all countries concerned do not reach this threshold.

### C. Legal Principles

55 This section is aimed at setting the framework for Part II by analysing the fundamental legal questions which are at the core of this case.

#### 1. General considerations

56 The two main elements raised in the complaint differ very much from a legal point of view. Whereas the first (equal pay) is very 'classic' in the sense of a long-standing tradition of States providing for (general) legislation in this respect but not sufficiently enforcing it the second problem is a fairly new element which is only slowly appearing at international and national level as a problem to be seriously dealt with.

57 Against this background being different in character both elements are governed by Article 20 of the Charter, 'The right to **equal opportunities and equal treatment** in matters of employment and occupation without discrimination on the grounds of sex'.<sup>44</sup> From the outset, it should therefore be noted that this Article belongs to the most relevant provisions as it is a so-called 'hard core' Article (see Article A§1(b) of the Charter). More generally, the Council of Europe attributes great importance to [Gender equality](#).

#### 2. Gender pay gap

##### a) General considerations

58 In general terms, the principle of equal pay for work of equal value is of fundamental character. It is directly related to the human dignity of women who fail to be recognised as equal when it comes to their remuneration.<sup>45</sup> They are prevented from taking part in the normal societal life at the same footing as men.

59 The Gender pay gap is one longest-standing element of equality between men and women in employment. According to the CEACR: 'Pay differentials remain **one of the most persistent**

<sup>44</sup> Or Article 1 of the 1988 Protocol; see for the most recent commentary on this provision *C. Kollonay Lehoczky*, Article 20, in: N. Bruun, K. Lörcher, I. Schömann, S. Clauwaert (eds.), *The European Social Charter and the Employment Relation*, Hart Publishing Oxford, 2017, 358 - 380.

<sup>45</sup> See the reference to human dignity in relation to remuneration in Article 23(4) UDHR.

**forms of inequality between women and men**' and can be considered as '**one of the most obvious examples of structural gender discrimination** (see above para. 20 (para. 668)).

60 Legally speaking, it found recognition in international human rights and employment law starting in 1948 by Article 23(2) UDHR (see above A.1.a)) and continued to be transferred to a legally binding international instrument for the first time by ILO Convention No. 100 in 1951 (see above A.2.a). This fundamental rights Convention also formed the basis of Article 4§3 of the Charter.

61 However, despite of all international and national legal and other measures, the principle of equal pay has not at all been (fully) applied. Quite to the contrary, in describing the future developments two documents might be quoted, first the *ILO* assessing the situation at the global level as something like a three generation problem (75 years):

Even where gender pay differences are narrowing, they are doing so extremely slowly: at the current rate it is estimated that another **75 years** will be needed to bridge the gap (see above para. 20 (para. 669))

whereas *Equinet* - mainly concerning the EU level - sees a nearly four generation problem (100 years):

Over the last years, the gaps in pay, employment and working hours have been plateauing. At this rate of change, it will take more than **a century** to close the overall gender gap in earnings. (see above para. 48)

for attaining equal pay if nothing fundamentally different happens earlier.

62 Besides this tremendous challenge as such there is a further duplicating dimension. As old-age pensions are normally based on the contributions paid during the working life and these contributions are calculated in relation to the remuneration received the discriminating gender pay gap has an enormously important negative impact on the amount of the old-age pensions,<sup>46</sup> in short: the lower wages lead to lower amounts of old-age pensions. Thus, the gender pay gap extends the discrimination of women even over the retiring age. This is dramatic because many women (even having worked for a long time) will run the great risk of poverty as elderly persons.

63 At least from the point of view of the ETUC this situation requires a much stricter approach to assess the situation of (non-)conformity in both substantive and procedural dimensions.

#### *b) Substantive requirements*

64 At the substantive level, there is a *quantitative* and a *qualitative* dimension. The former is related to the statistical (evaluation of the) situation. In assessing the (non-)conformity of the situation in respondent States it would appear that the Committee only attributed a decisive importance if there was 'manifestly' high (unadjusted) gender pay gap.<sup>47</sup> However, from the point of view of the ETUC it would be necessary to change this approach.

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<sup>46</sup> See, for example, the EU Council conclusions '[Equal income opportunities for women and men: Closing the gender gap in pensions](#)' (04.06.2015).

<sup>47</sup> See, for example, [Conclusions 2014 - Azerbaijan - Article 4§3](#): 'The Committee notes from the report that in 2009 the average wages of women amounted to 58,6% of that of men and 46,2% of that of men in 2012. The Committee notes the downward trend in wage equality and considers that the unadjusted pay gap is manifestly too high and therefore, finds that the situation is not in conformity with the Charter.'

- 65 Starting by the fundamental word 'equal', continuing with the great importance of this right (see above in particular para. 58 but also paras. 13, 15, 17 and 21) and taking into account the necessity that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form.<sup>48</sup>
- 66 According to the point of view of the ETUC, a different approach is required. This would mean that only a 'zero' difference is permitted. However, admitting even that 'equal' might not be interpreted in the strict sense it should nevertheless be evaluated at the threshold close to 'zero'. A reasonable threshold would therefore appear to permit only a difference of 5%.
- 67 According to relevant statistics (see above B.1) all countries concerned by the complaints for which information is available the minimum Gender pay gap still lies above 5.5 %. That means that for all countries concerned the principle of equal pay for work of equal value is not ensured.
- 68 In *qualitative* terms, the Committee has established certain requirements. As it obvious from the statistics referred to above (see above B.1) the timeline shows the persistent nature of the Gender pay gap. Against this background, it is not any more sufficient to say that the respondent States are (totally) free in their means how to ensure equal pay. In drafting a list of measures particular attention is paid to the Conclusions of the Committee. However, sometimes it appears necessary to go further by particular taking into account international case law. Accordingly, it would appear important to require a clear and comprehensive legislation (see above para. 21 (para. 732). In also taking into account also the international case law (see above A.) this legislation should at least ensure that
- the coverage of **all workers** (in a wide definition) is ensured (taking in particular into account that there is no limitation to the 'great majority' like in Article I§2 e.g. for Article 2),
  - the general legal concept includes also **indirect** discrimination (see above para. 21 (in particular para. 745),
  - the term 'pay' contains **all elements of remuneration** as well as supplementary pensions,
  - the **comparison** comprises as a minimum
    - *transparency* (see, for example, above para. 42) or at the very least an effective prohibition of any requirement of confidentiality imposed by employers on potential victims of discrimination or referred to as requirement in any impartial procedure aimed at examining potential discrimination in relation to remuneration,
    - the reach of *comparison* between jobs performed by women and men *being construed as wide as possible* (see above para. 20 (para. 698),
    - the wide definition of 'equal value' also *encompassing work that is of an entirely different nature*, which is nevertheless of equal value (see above para. 20 (para. 673); 'completely different', see above para. 15 (para. 11)),
    - the necessity to evaluate the respective job by a '*job evaluation*' with criteria excluding any kind of (also indirect) discrimination (see, for example, above 15 (paras. 12 and 13), para. 17 (para. 2), para. 20 (para. 701)),

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<sup>48</sup> Decision on the merits, 09.09.1999 - No. 1/1998 - *International Commission of Jurists v. Portugal*, para. 32.

- the respective *assessment* followed by effective *consequences* in case that the result shows a discrimination.

### c) *Procedural requirements*

69 Procedural requirements are aimed at additionally serving to ensure the effective exercise of the right to equal pay. Besides the substantive criteria mentioned above it is necessary to ensure them by **legislation**. However, it is not sufficient to enact legislation. In particular, a *review of legislation* is necessary if the threshold is not attained (see, for example para. 13). This would mean that a country which has not attained the threshold required and has not reviewed existing legislation in a given period of time (at least within a period of five years (see above B.1)) should be considered as violating Article 20 of the Charter,

70 Legislation must be **applied effectively**. The following elements are necessary to ensure this application. At a *general* level,

- the labour inspection must have the task of monitoring and possibly intervening coupled by the respective powers and the appropriate equipment in financial and personal terms,
- trade unions as well as human rights institutions or organisations must have the right to file (general) complaints (and be admitted as third parties in any individual complaints (see below).

71 At an *individual* level, the women concerned must have the right to effective access to court complemented by a fair and effective procedure including i.a. the shift of burden of proof to the employer. Moreover, any discrimination (victimisation) in relation of taking any procedural action must be effectively prevented.

72 In any event, it appears important that any possible shift from substantive to procedural requirements should not be continued. Conversely, both elements should be evaluated on their own merits (thus leading possibly to two violations).

### d) *Interim conclusions*

73 This catalogue of measures appears necessary in order take a new, fresh an comprehensive step to achieve the elimination of the Gender pay gap at least to considerably shorten the enormous periods of time mentioned above (see para. 61). If they are not implemented the Committee should find a violation of Article 20 of the Charter.

74 This is particularly the case in relation to the substantive requirement of the 5 % threshold mentioned above (see para. 66). As all countries concerned do not attain this threshold the Committee should come to finding a violation already for this reason.

## 3. (Under-)representation in decision-making bodies within private companies

### a) *General considerations*

75 As previously described, the problem of equal representation in decision-making bodies in private companies has only recently appeared at the stage of international and European level (see para. 56). In terms of the Charter and according to the Decision of admissibility, it relates

to Article 20 of the Charter RESC. Until now and in substance, the Committee has only timidly dealt with this question (see above para. 30).

- 76 That is why it appears necessary to interpret Article 20 according to the principles which have been referred to previously. As a starting point it might be helpful to understand that a position as member in a board is of course crucial for your general career in working life.
- 77 The *wording* of Article 20 of the Charter might be considered as not very clear in this respect. Two main questions might have to be addressed: Are the fields referred to in lit. a) – d) of exclusive character? In the affirmative: Does any of the fields enumerated in lit. a) – d) encompass the collective character of decision-making positions in general and decision-making bodies in particular?
- 78 Concerning the first question the wording as such does not exclude a non-exhaustive character because it does not contain any specific wording to this effect (such as ‘only’ or ‘exclusively’). Nevertheless, one could base an exclusive understanding on a comparison with other provisions which contain specific wording as the exemplary character (e.g. ‘such as’). In such as case it would be necessary to answer the second question.
- 79 To answer the second question the notion of ‘positions’ and ‘bodies’ has to be clarified. First, decision-making ‘positions’ could be understood as the more general term than the respective ‘bodies’. As the former are closely related to an individual situation (such as promotion) this situation would fall under lit. d) (‘career development, including promotion’). However, if ‘bodies’ was something separate, the situation might be more complicated. (If a member of a ‘body’ is chosen internally, there is no problem to consider this also as a ‘promotion’ because of their possibly different character.) In any event, it could be also considered as ‘terms of employment’ understood as being also meant in a collective dimension.
- 80 Examining the *context* as well as the *objective* of Article 20 of the Charter, based in particular on the wide formulation in Part I as well as in particular the introductory part of Article 20 (‘effective exercise ...’) there should be no doubt that these elements strive for including this issue in the said provision.
- 81 Taking into account also an emerging trend in national legislation complemented by recent *international case law* of CEDAW (see above para. 18) and first elements in EU legislation (see above para. 39) this trend should be considered as confirming such an interpretation. Concerning the developments in international law, mainly elaborated by the CEDAW, tend to go in a more collective dimension. In particular Articles 2 and 3 CEDAW read together with Article 11 CEDAW can be interpreted to cover a general obligation for the Contracting Parties to take effective measures in order to achieve equality regarding the female representation on boards in private companies.
- 82 Concluding this examination, the ETUC is of the view that the Committee should come to the conclusion that the (under-)representation of women in decision-making bodies is covered by Article 20 of the Charter.

#### *b) Substantive requirements*

- 83 In substantive terms, it would appear necessary to provide for a threshold which should be attained in order to secure equal representation in decision-making positions. If one would, however, not require an ‘equal’ representation (and thus oblige States to ensure 50%

representation of both sexes) it would nevertheless appear important to define a threshold close to this percentage (for example 40%).

### *c) Procedural requirements*

84 In principle, and *mutatis mutandis* the same elements as described above (2.c) should apply here also.

### *d) Interim conclusions*

85 Article 20 of the Charter should be understood as covering (under-)representation of women in decision-making bodies within private companies. This would of course apply all the more to State-owned enterprises or respective bodies in public administrations. In examining the question of (non-conformity the Committee should come to the conclusion to require a threshold to be attained which is close to or least not distant from 50%. It should require also respective legislation and all necessary procedural measures which are necessary to achieve this objective.

86 If one would take the basis of 40% and if one would further base the assessment in particular on the relevant statistics (see above B.2) it would appear that the States concerned do not sufficiently ensure the application of Article 20 of the Charter.

## II. Specific situation

87 On the foundation of the 'General framework' (described in Part I) this Part II will provide the country-specific international case law (see below A)<sup>49</sup> as well as any further pertinent material (see below B) and thus form the basis for the legal assessment (see below C).

88 To recall, the main content of the complaint against Italy is described in the Decision on admissibility of 4 July 2017<sup>50</sup> as follows:

UWE invokes the following grounds:

a) The first concerns the wage gap between men and women in Italy, which still persists and is unfavourable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation enacted in this area. In this respect, UWE also alleges that, in practice, the bodies which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfil their task in fighting discrimination, thus rendering existing legislation ineffective. UWE cites the work in particular of the National Equality Committee, created in 2015, assisted at the local level by councillors specialised in fighting discrimination at work, and the labour inspectorate;

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, in spite of the legislation, particularly Act No. 2011-103 of 12 July 2011, which imposes a 30% quota for women within administration boards of public listed companies or companies controlled by the public administration.

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<sup>49</sup>As already indicated in paragraph 6 of Part I, the extracts of case law of international bodies highlighted below refer in principle to the latest recommendations/observations/concerns expressed by those bodies on the respondent country unless mentioned or considered relevant otherwise.

<sup>50</sup> [Decision on admissibility](#), 4 July 2017.

## A. *International case-law*

### 1. *United Nations*

89 The situation in Italy has been examined in relation to the obligations deriving from two relevant instruments as follows:

#### a) *International Covenant on Civil, Political and Cultural Rights*

90 After considering the sixth periodic report submitted by Italy, the Human Rights Committee (CCPR) adopted the following ‘Concluding Observations’:<sup>51</sup>

#### C. Principal matters of concern and recommendations

##### *National human rights institution*

6. While noting that a number of specific bodies dedicated to the promotion of human rights are in operation and the repeated commitment made by the State party to establish a national human rights institution, the Committee regrets that no **such institution has yet been established** (art. 2).<sup>52</sup>

7. *The State party should expeditiously establish a national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).*

##### *Anti-discrimination legislation*

8. The Committee is concerned that **article 3 of the Constitution does not contain a comprehensive list of prohibited grounds of discrimination and that existing anti-discrimination legislation addresses only some grounds of discrimination, in limited spheres** (arts. 2 and 26).<sup>53</sup>

9. *The State party should take all measures necessary, including the adoption of comprehensive anti-discrimination legislation, to ensure that its legal framework: (a) provides full and effective protection against discrimination in all spheres, including in the private sphere, and prohibits direct and indirect discrimination; (b) comprehensively addresses all grounds of discrimination, including colour, national origin, citizenship, birth, disability, age, sexual orientation and gender identity and any other status; and (c) provides for effective remedies in cases of violations, including in cases of multiple and intersectional discrimination.*

#### b) *International Covenant on Economic, Social and Cultural Rights*

91 Examining the fifth periodic report of Italy, the Committee on Economic, Social and Cultural Rights (CESCR) has come to the following ‘Concluding Observations’:<sup>54</sup>

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<sup>51</sup> Adopted at its 3364th meeting, held on 23 March 2017. See also [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fITA%2fCO%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fITA%2fCO%2f6&Lang=en).

<sup>52</sup> After having been consulted on these observations, the ETUC affiliate CGIL confirmed that there exists in Italy a network called “Consigliere di parità” (on national, regional and provincial level). There exists also a department for Gender Equality under the Presidency of the Council of Ministers.

<sup>53</sup> The ETUC affiliate highlights that several (academic) authors interpret the list of Article 3 of the Constitution as an open (so non-exhaustive) list.

<sup>54</sup> Adopted at its 78th meeting, held on 9 October 2015. See also [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fITA%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fITA%2fCO%2f5&Lang=en).



## C. Principal subjects of concern and recommendations

### *Austerity measures*

8. While recognizing the financial crisis faced by the State party, the Committee expresses concern that the levels of effective protection for the rights enshrined in the Covenant have been reduced as a result of the **austerity measures** adopted by the State party, which adversely affects enjoyment of the Covenant rights, particularly by disadvantaged and marginalized individuals and groups.

9. *The Committee recommends that the State party review, based on a human rights impact assessment, all the measures that have been taken in response to the financial crisis and are still in place, with a view to ensuring the enjoyment of economic, social and cultural rights. In this regard, it draws the State party's attention to its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis, and in particular to the requirements that austerity policies must meet.*

### *National human rights institution*

14. While noting the information provided by the delegation about the pending draft laws aimed at establishing a national human rights institution, the Committee remains concerned about the continued delays in doing so despite its previous recommendation.

15. *The Committee urges the State party to redouble its efforts to establish an adequately resourced national human rights institution that is compliant with the principles relating to the status of national institutions (Paris Principles) and is mandated with the protection and promotion of all human rights, including economic, social and cultural rights.*

### *Equality between men and women*

22. The Committee notes with appreciation the adoption of various laws and policies aimed at increasing women's representation in political affairs, including **Act No. 120/2011 on equal access to boards of directors and boards of statutory auditors of publicly listed companies and Act No. 215/2012 on provisions to promote gender balance and equality in local governments and regional councils**. However, it remains concerned that gender role stereotypes persist and that women's representation in the national Parliament, the judiciary and **senior positions within the public administration** remains unsatisfactory. It is also concerned that Roma women and women from the south are nearly absent from the public scene (art. 3).

23. *Recalling its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee recommends that the State party step up its efforts to combat gender stereotypes and that it embark on national awareness-raising campaigns, including by increased use of the media, aimed at modifying the population's mindset as regards gender roles. It also recommends that the State party take effective measures to enhance women's participation in all areas of public life, and that it consider the adoption of temporary special measures including quotas, paying particular attention to Roma women and women from the south.*

### *Women's employment*

26. The Committee is concerned about the sharp difference in the employment rate between women and men, which particularly affects women in the south. The Committee is also concerned about women's concentration in the informal economy and in low-paid sectors, which perpetuates vertical and horizontal occupational sex segregation and the **gender wage gap**. The Committee is further concerned that the already low rate of women's employment before the financial crisis has been exacerbated by austerity measures (arts. 3, 6 and 7).

27. *The Committee recommends that the State party take effective measures to raise the employment rate of women, while paying particular attention to the situation of women in the south. It is encouraged to do so including by embarking on education and training programmes aimed at reducing occupational sex segregation and encouraging women to take up traditionally male-dominated occupations, as well as by considering creating incentives for employers.*

Furthermore, it recommends that the State party ensure that austerity measures do not generate a disproportionately negative effect on women's employment.

#### *Just and favourable conditions of work*

30. While noting that the State party has introduced an hourly minimum wage, the Committee is concerned about the absence of a monthly minimum wage for groups of workers not covered by collective agreements.. The Committee is also concerned about the **absence of the principle of equal pay for work of equal value in the State party's legislation** (art. 7).<sup>55</sup>

31. The Committee recommends that the State party establish a monthly minimum wage that is indexed to the cost of living and allows a decent living for all workers and their families. The Committee also reiterates its recommendation that the State party without further delay explicitly include in the labour code the principle of equal pay for work of equal value for men and women, and introduce the mechanism necessary for its effective implementation.<sup>56</sup>

#### *c) Convention on the Elimination of All Forms of Discrimination against Women*

92 In its 'Concluding observations' concerning the seventh periodic report of Italy, the Committee on the Elimination of Discrimination against Women (CEDAW) has expressed the following concerns and recommendations.<sup>57</sup>

#### *D. Principal areas of concern and recommendations*

##### *General context*

9. The Committee notes with concern that the financial and economic crisis and austerity measures adopted by the State party in an effort to stabilize public finances have had a detrimental and disproportionate impact on women in all spheres of life due to cuts in public services mostly used by women for themselves or for persons under their care such as children and the elderly. The Committee reminds the State party that, even in a time of fiscal constraint and economic crisis, special efforts must be made to respect women's rights, sustain and expand social investment and social protection and employ a gender-sensitive approach, according priority to women in vulnerable situations and avoiding retrogressive measures.

10. The Committee recommends that the State party:

(a) Undertake a comprehensive study on the consequences of the **austerity measures** on women and design an action plan to mitigate the adverse effects of such measures;

(b) Ensure an internal redistribution of its resources to overcome the consequences of the financial crisis, according priority to measures that support gender equality in all fields.

##### *Legislative framework and access to justice*

17. The Committee notes the numerous laws and regulations aimed at combatting sex-based discrimination and making gender equality a reality, especially Legislative Decree No. 5/2010 by which the code of equal opportunities between women and men was supplemented and amended. It also notes the implementation of the CoE-EU JUSTROM pilot-programme on Access to Justice for Roma, Sinti and Camminanti Women, in partnership with UNAR. However, the Committee is concerned about:

(a) The limited effectiveness of the State party's anti-discrimination legislation; [...]

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<sup>55</sup> The ETUC affiliate CGIL highlighted in its comments to these observations that 1) there exists no statutory minimum salary in Italy and 2) that the principle of equal pay for men and women is guaranteed by article 28 of the Legislative Decree 198/2006 (subsequently amended, see also paragraph 95 below).

<sup>56</sup> The ETUC affiliate CGIL highlights that there exists no "labour code" in Italy.

<sup>57</sup> Considered at its 1502<sup>nd</sup> and 1503<sup>rd</sup> meetings held on 4 July 2017. See also [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fITA%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fITA%2fCO%2f7&Lang=en).

(c) The difficulties faced by women in claiming their rights owing to legal illiteracy, the costs and length of procedures, insufficient legal aid, gender bias within the judiciary and lack of reparation; (...)

18. *In line with its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:*

- (a) *Strengthen the legislative framework on gender equality and eliminate sex-based or gender-based discrimination; [...]*
- (d) *Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers.*

#### *National machinery for the advancement of women*

21. The Committee welcomes the establishment of a number of new institutions and mechanisms aimed at eliminating discrimination against women, as well as the extension of the mandate of existing mechanisms within the Presidency of the Council of Ministers and various Government Departments. The Committee is, however, concerned about:

- (a) The insufficient human, technical and financial resources allocated to the national machinery for the advancement of women to effectively coordinate and implement gender equality plans, policies and programmes in all areas and at all levels of government;
- (b) The absence of an overarching and integrated policy on gender equality at the national level;
- (c) The complexity of the national machinery given the need for clear and coherent coordination of gender mainstreaming efforts;
- (d) The priority given by the Department of Family Policies to protection of the family as compared to the elimination of discrimination against women.

22. *The Committee recommends that the State party:*

- (a) *Increase the resources allocated to the Department of Equal Opportunities to ensure a clear focus on women's rights is maintained and consider re-establishing the Ministry of Equal Opportunities as a high-level mechanism capable of initiating, coordinating and implementing gender equality policies;*
- (b) *Expedite the adoption and effective implementation of a national gender policy, and ensure that gender mainstreaming is consistently applied in the formulation and implementation of all laws, regulations and programmes in all ministries and decentralized Government structures;*
- (c) *Strengthen coordination between the various components of the national machinery by clearly defining their mandates and responsibilities in relation to women's rights, and conduct regular monitoring and evaluation of such coordination; ensure that the national machinery is represented at the regional and local levels;*
- (d) *Ensure the full compliance of the Department of Family Policies with the principles enshrined in the Convention, both in its goals and in its actions.*

#### *National Human Rights Institution*

23. The Committee notes the information provided by the delegation about the pending draft law aimed at establishing a national human rights institution. It remains, however, concerned about the continued delays in adopting such law.

24. *The Committee recommends that the State party finally establish an adequately resourced national human rights institution compliant with the principles relating to the status of national institutions (Paris Principles; GA resolution 48/134 of 20 December 1993) and is mandated with the protection and promotion of all human rights, including women's rights.*

#### *Participation in political and public life*

31. The Committee notes the State party's legislative measures to increase the participation of women in political and public life, including **mandatory quotas** for national, local and European elections, and **for boards of publicly-listed and State-owned companies**, which resulted in the progressive increase of women's representation in the

national parliament (30.1 per cent), regional governments (35 per cent), the European Parliament (39.7 per cent), as well as on boards of publicly-listed and State-owned companies (27.6 per cent). The Committee remains, however, concerned that:

(a) Women in the State party are **still underrepresented** in Parliament and in regional councils, as well as in ministerial positions, in the judiciary, **on boards of directors and in senior positions within the public administration**, including in the diplomatic service; (...)

32. *The Committee recommends that the State party:*

(a) *Strengthen women's representation in decision-making positions in political life, including in ministerial positions, in the judiciary, on boards of directors and in senior positions within the public administration, including in the diplomatic service, and to that end, adopt measures, including temporary special measures, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25, such as a gender parity system for accelerated recruitment and appointment of women to senior positions in the public administration;*

### *Employment*

37. The Committee welcomes the adoption of various measures taken by the State party to support the participation of women in the labour market and facilitate the reconciliation of work and family life and encourage shared parental responsibilities. However, it is concerned that the **austerity measures** introduced in response to the economic and financial crisis have had a severe and disproportionate impact on women, in particular women with disabilities, older women and women domestic workers. Women have faced unemployment, reductions in social security and dependent care payments, **wage freezes** and the transformation of full-time jobs into part-time jobs with overtime hours. The Committee is particularly concerned about:

(c) The **persistent gender wage gap, in both the public and private sectors**, which adversely affects women's career development and pension benefits; (...)

38. *The Committee recommends that the State party: [...]*

(b) *Adopt effective measures, including skills training, incentives for and encouragement of women to work in non-traditional fields and eliminate occupational segregation, both horizontal and vertical, in the public and private sectors;*

(c) *Adopt measures to narrow and close the gender wage gap, including by applying gender-neutral analytical job classification and evaluation methods and regular pay surveys; [...]*

## 2. International Labour Organisation

93 The CEACR has made the following statements concerning Italy in relation to the following Conventions:

### a) *Convention No. 100*

Direct Request (2014)<sup>58</sup>

**Gender pay gap.** The Committee notes that according to the statistical information provided in the Government's report, the gender wage gap, taking into account the net hourly wage, increased during the period 2011–12 by an average of 1.8 per cent. As regards sectors, in particular, it increased by 4.6 per cent in the transport sector, by 15.8 per cent in the construction sector, and by 8 per cent in the technical professions. It decreased by 19 per cent in the manufacture sector, by 0.9 per cent in public administration and 1.3 per cent in education, health and social assistance. The Government highlights that due to the current economic crisis, the net hourly wage of women is 10 per cent higher than that of men in the manufacturing sector. The Committee further notes that the gender wage gap is considerably higher (3.4 per cent) among workers aged 40–49 years. According to a report published in February 2013 by ISTAT, in 2010, workers with higher qualifications received an average salary of €88,942 for men and €61,361 for women, and workers with lower qualifications, received an average salary for men of €20,064 and for women

<sup>58</sup> Adopted 2013, published 103rd ILC.

of €13,784. The Committee notes the Government's indication that due to the current economic and financial crisis, no project has been financed to address specifically the gender pay gap. The Committee notes however, the implementation of the Charter for Equal Opportunities in 546 enterprises and 164 public administrations and the projects carried out by the National Equality Counsellor to improve women's participation in the labour market. *The Committee requests the Government to provide information on the impact of the implementation of the Charter for Equal Opportunities and of all the activities carried out by the National Equality Counsellor on the application of the principle of the Convention and the reduction of the gender pay gap. The Committee requests the Government to continue to provide statistical information disaggregated by sex on the distribution of men and women in the different sectors and occupations and their corresponding earnings, including in higher level occupations, in the public and private sectors so as to allow an evaluation of the progress made over time to reduce the gender pay gap. Please provide information on any legislative measure adopted with a view to collecting and processing statistical data on gender wage differentials, pursuant to section 46 of Act No. 183/2010.*

**Public administration.** The Committee notes the Report prepared by the Department of Equal Opportunities and the Department on Public Administration concerning the measures for equal opportunities and treatment in the public administration for 2011. The Committee notes that despite the action and measures undertaken to promote gender equality, no specific measures appear to have been taken in order to address **wage differentials in the public administration**. *The Committee again requests the Government to take measures to increase action in public administration so as to promote and ensure equal remuneration for men and women for work of equal value and to reduce the gender pay gap and to report on the results achieved.*

**Article 3 of the Convention. Objective job evaluation.** The Committee notes that the Government refers to the report of activity for 2012 prepared by the National Equality Counsellor according to which a mechanism for the evaluation of the performance of the Administration as well as of its employees is being envisaged and that it will take into account the gender aspect. The Government also refers to the Charter for Equal Opportunities which refers to equality of opportunity in access to employment of men and women. The Committee observes, however, that it does not address objective job evaluation. The Committee recalls that the concept of "equal value" provided for in the Convention requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. This objective job evaluation is different from the performance appraisal of jobs which aims at evaluating the performance of an individual worker in carrying out his or her job. Objective job evaluation measures the relative value of jobs with varying content on the basis of the work to be performed. It is concerned with evaluating the job not the individual worker (see General Survey on fundamental Conventions, 2012, paragraphs 695 and 696). *Recalling that section 28(2) of Legislative Decree No. 5/2010 provides that "systems of job classification determining remuneration shall adopt common criteria for men and women and be developed with a view to eliminating discrimination", the Committee again asks the Government to provide information on the implementation of this provision, as well as on any action taken or envisaged to promote, in cooperation with the social partners, the development and use of objective job evaluation methods in both the private and the public sectors.*

**Parts III–V of the report form. Enforcement.** *The Committee requests the Government to provide information on the practical application and the impact of anti-discrimination legislation, including Legislative Decree No. 5/2010 and Act No. 183/2010 in reducing pay differentials between men and women. In this regard, please provide specific information on the activities of the "Single Committees to Guarantee equal opportunities in the achievement of the well-being of workers and the prevention of discrimination" (CUG) with respect to the implementation of the Convention. The Committee further requests the Government to provide information on the labour inspection activities concerning the application of the principle of the Convention, including the infringements detected, remedies provided and penalties imposed.*

b) *Convention No. 111*

Direct Request (2014)<sup>59</sup>

[...] Public administration. The Committee notes the Report prepared by the Department of Equal Opportunities and the Department of Public Administration concerning the measures for equal opportunities and treatment in public administration for 2011. According to this report women continue to be under represented in managerial positions (14.69 per cent of men compared to only 6.67 per cent women) and organizational position (5.30 per cent of men and 3.64 per cent of women); parental leave is mainly enjoyed by women (70 to 87 per cent depending on the public entity under examination); men participate more in training that help them for career advancement; and there is still little capacity building on issues related to gender. The report further indicates that the great majority of public administrations have drafted triennial plans for affirmative action. The Committee observes, however, that the impact of these triennial plans is not clear. *The Committee asks the Government to provide information on the impact of the “triennial plans for affirmative action measures” on promoting the access of women to posts and job positions in the public administration in which they are under-represented. Please also provide information on the activities of the “Single Committee to Guarantee equal opportunities in the achievement of the well-being of workers and the prevention of discrimination” (CUG), including the manner in which these committees cooperate with the National Equality Counsellor. [...]*

3. *Council of Europe*

94 In examining the situation in Italy, the ECSR has come to the following ‘Conclusions’:

a) *Article 4§3*

Conclusions 2014

The Committee takes note of the information contained in the report submitted by Italy.

*Legal basis of equal pay*

The Committee refers to its conclusion on Article 20 (Conclusions 2012) where it took note of the Legislative Decree No. 5 of 25 January 2010 which transposed Directive 2006/54/EC (on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation) into domestic law and amended the Legislative Decree of 11 April 2006 (the Code for Equal Opportunities). This reinforced the measures to combat discrimination on the ground of sex.

The Committee notes from the report that the new paragraph 1 of Art. 28 of the Code which reinforced the prohibition of discrimination, both direct and indirect, on any aspect or condition relating to **pay for the same work or work to which equal value** is attributed. Similarly, collective agreements are now expected to include specific measures to prevent discrimination on the ground of sex, particularly with regard to pay.

*Guarantees of enforcement and judicial safeguards*

According to the report, Chapter III of Book III of the Code of Equal Opportunities is devoted to the protection of the victim of direct and indirect discrimination. Distinction is made between individual discrimination and collective discrimination.

As regards individual discrimination, Article 36 of the Code recognises an individual right to appeal following an alleged act of discrimination in any matters relating to access to work, promotion and training, conditions of work, including remuneration. Article 37 of the Code deals with collective discrimination and empowers the regional councilor to take appropriate action.

According to the report the shift of the burden of proof applies in discrimination cases. As regards sanctions, tougher measures now apply. Administrative sanctions for violation of standards for

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<sup>59</sup> Adopted 2013, published 103rd ILC.

access to employment, pay and work conditions are more severe. The amounts ranging from € 103 to 516 have been increased to amounts ranging from €250 to 1,500.

#### *Methods of comparison and other measures*

According to Article 46, as amended by legislative decree 5/2010, enterprises, both public and private, employing more than 100 employees are required to produce a report every two years on the situation of gender in each profession regarding recruitment, training and promotion.

According to the report equal pay is one of the fundamental elements of equality in the labour market. The pay gap is measured as a difference between average salary of men and women. According to Eurostat in 2011 the unadjusted pay gap stood at 5,8% in Italy, which is significantly lower than the EU average. The Committee asks what is the pay gap for work of equal value.

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

The Committee holds that this interpretation applies, *mutatis mutandis* to Article 4§3.

The Committee asks whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

#### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

### *b) Article 20*

#### *Conclusions 2016*

The Committee takes note of the information contained in the report submitted by Italy.

#### *Equal rights*

The Committee recalls that it examines measures relating to maternity protection and family responsibilities under Articles 8 and 27 of the Charter (Conclusions 2015).

The Committee examined the legislation on the right to equal treatment of men and women in its previous conclusions (Conclusions 2006, 2008 and 2012).

The report provides information on the changes in the legislation which were adopted during the reference period between 2011 and 2014.

**Law No. 120 of 12 July 2011 (known as the Golfo-Mosca Law) introduced a mechanism designed to ensure equal access to the boards of directors and boards of auditors of companies listed on regulated markets and of non-listed state companies.** The provisions of this law applied from the first renewal of the members of such boards in listed companies after a year following the entry into force of the law (12 August 2012), reserving, pursuant to the law, at least one fifth of the seats of the elected directors and auditors during the first term of office for the underrepresented sex. The law has set up supervisory or monitoring bodies such as the National Commission for Companies and the Stock Exchange (CONSOB) to deal with listed companies, and assigned supervisory tasks to the Prime Minister or the Minister responsible for

equal opportunities for non-listed state companies, backed up by penalties including injunctions, fines of €100 000 to €1 000 000 or removal from office for the board members concerned or orders to reconstitute boards in the manner and under the conditions provided for by the law and statutes.

The report states that the new regulations have contributed significantly to the increase in the number of women on the boards of directors and auditors of the companies in question. For example, at the end of 2013, 17.8% of the board members of listed Italian companies were women (compared to about 6% in 2008) and about 83.5% of companies had representatives of both sexes on their boards (4% in 2008) (CONSOB 2013).

The report also mentions important measures to promote equal representation of the sexes in politics such as Law No. 65 of 22 April 2014, which amended the existing regulations to ensure a better balance between the sexes in the election of Italian MEPs.

As to means of appealing against discriminatory acts and conduct, the report states that there are two types of possible action: an individual complaint, in which the worker uses conciliation procedures and/or takes his or her case directly to an ordinary law court, or a collective complaint.

Another means of complaining of discrimination at work on the ground of gender is through special urgent proceedings (Article 38 of Legislative Decree No. 198/2006), which may be initiated by the persons concerned or his or her representative or by a trade union, an association or organisation protecting the right or interest alleged to have been infringed or the equality counsellor with jurisdiction over the workplace concerned. Even in such cases, if the labour court finds that there was discrimination, it orders the perpetrator to bring an end to the illegal conduct and eliminate its effects (and, if necessary, pay damages, which may be non-material in nature).

Where collective action is concerned, regional or national equality counsellors who find that there has been collective discrimination may, before bringing legal proceedings, ask employers to prepare a plan for the elimination of the discrimination in question, having consulted the trade unions. If this plan is found to be appropriate, counsellors may support attempts at conciliation and the report they draw up at the end of this process may become binding on the employer.

The Committee asks for updated information in the next report on the penalties applied to employers and the damages paid in practice in cases of discrimination at work on the ground of gender.

The Committee asked whether, in **equal pay cases**, the legislation allowed comparisons of pay and jobs to be made outside the company directly concerned and under what circumstances (Conclusions 2012, Article 20).

The Committee points out that it examines the right to equal pay under Articles 20 and 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). The Committee noted previously that, under Article 46 of the Equal Opportunities Code, as amended by Legislative Decree No. 5/2010, public and private enterprises employing more than 100 employees are required to produce a report every two years on the gender situation in each profession regarding recruitment, training and promotion (Conclusions 2014, Article 4§3).

The report points out that under national law, pay is determined not by the law but by collective bargaining, which establishes minimum wages by economic sector and by qualification. Consequently, as a rule, in all the companies in the same economic sector, the national collective agreement (CCNL) is applied, offering equal pay for equal work to all of those companies' employees. Instead of the CCNL employers may apply the Second-Level Company Contract, under which workers are awarded higher wages if they increase their productivity. As a result, it can happen that, for equal work, a worker is paid more or less in one company than a worker doing the same job in another company belonging to the same economic sector.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make pay comparisons across companies (Conclusions 2010, France). At the very least, legislation should require pay comparisons across companies in one or more of the following situations:



- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.

(Statement of Interpretation on Article 20 (Conclusions 2012).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

The Committee considers that the pay gap may indeed be due to different levels of regional development, differences in economic performance of companies or other similar reasons. However, these reasons should not prevent workers from testing their equal pay case by comparing their pay with that of another worker performing work of equal value in another company, based on the criteria outlined above.

The Committee therefore understands that in Italy it is possible to make pay comparisons between companies belonging to the same sector/which are part of the same collective labour agreement and it asks that the next report confirm this understanding. In the meantime it reserves its position on this point.

### *Equal opportunities*

The report states that the gender wage gap in Italy in 2013 was 7.3%, in other words significantly lower than the EU average (16.4% in 2013). The Committee notes from Eurostat data that the wage gap fell to 6.5% in 2014.

According to the **Gender Gap Report 2015**, prepared by the consultancy firm JobPricing on the basis of information from various occupational sectors, the gap had widened in particular in the financial services sector (27.5% in favour of men) and the services sector (14%). On the other hand, the trend had been reversed in agriculture (where women had earned 13.2% more) and in construction (12.6%). The same study shows that over the last ten years, the number of women in important corporate positions has been steadily increasing. The proportion of women on senior management posts rose from 24% in 2004 to 29% in 2013 while the proportion on other management posts increased from 39 to 42%.

The report states that the employment rate for women, of 54.4% in 2014, was over 20 percentage points lower than that for men (73.6%). This rate also varied considerably throughout the country. In southern Italy it was 15 points lower than the national average (at 39.6% in 2014). The female unemployment rate in 2014 was 13.8%.

The Committee notes the measures taken to promote equal opportunities mentioned in the report, particularly those designed to help reconcile work and private life, foster the integration of women into economic and social life and encourage entrepreneurship among women by facilitating access to credit, along with numerous projects devised and implemented by the government through the work of the Equal Opportunities Department and the National Equality Counsellor (including *Lavoro in Genere*, the Women's Project and an Equal Opportunities Network).

As to equal opportunities in public service employment, the report states that public services must establish three-year plans outlining positive action to ensure, in each of their fields, that obstacles which effectively prevent the full achievement of equal opportunities at work for women and men are removed.

The Committee notes all the projects, plans and measures set up by Italy and described in the report. It asks for detailed information in the next report on the position of women in employment and training and on the gender pay gap. It also asks for information on all positive measures to promote gender equality, in particular equal pay for work of equal value.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 20 of the Charter.

## *B. Further pertinent material on the situation in law and practice*

### *1. Concerning the Gender pay gap*

95 From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to discrimination on the grounds of sex in general and equal pay for equal work in particular -and without being exhaustive- the following:

- The Decree on Gender Budgeting in public administrations, in June 2017, by which the impact of public policies on women and men will be assessed with regard to pay, services, unpaid time and work;
- Legislative Decree No. 5 of 25 January 2010 regarding the “Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)”, which modifies and supplements Legislative Decree No. 198 of 11 April 2006 (Equal Opportunities Code), redefines direct and indirect discrimination and wage discrimination (sections 25 and 28), and provides for new penalties on employers for non-compliance (section 41(2)) and for specific forms of protection, both of a conciliation and judicial character, entrusted to the National Equality Counsellor (section 37).

96 However, despite this existing regulatory framework, (recent) statistic show that there still exists a gender wage gap in Italy:

- According to the Commission, based on Eurostat 2014 figures, in Italy, the gender pay gap stands at 6.1 %<sup>60</sup> (the average gender pay gap in the EU is 16.7 %) and the gender overall earnings gap in Italy stands at 43.9 % (the average gender overall earnings gap in the EU is 39.8 %).<sup>61</sup>

### *2. Concerning the (under-)representation in decision-making positions within private companies*

97 From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to representation of women in decision-making positions in private and public enterprises/administrations - and without being exhaustive - are the following:

- Law No. 103/2011 of June 2011, which provides for minimum quotas for the less represented sex in boards of directors and boards of statutory auditors

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<sup>60</sup> According to the Eurostat figures for 2015, this stands now at 5.5%. (See also table in Part I.B.1)

<sup>61</sup> European Commission factsheet gender way gap 2016 - Italy ; [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/2016/gpg\\_country\\_factsheet\\_it\\_2016\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/2016/gpg_country_factsheet_it_2016_en.pdf)

of publicly listed companies and state-owned companies.<sup>62</sup> This law has a temporary validity, since it foresees mandatory quota only for the three mandated board terms to follow. 2022 is thus a cut-off date.

- Unified Text incorporating Chamber Act 2426 and Chamber Act 2956 B of 28 June 2011 aimed at increasing the participation of women in the boards of publicly traded companies or those with a public participation
- Decree of the President of the Republic (DPR of 30 November 2012) which extended the application of the law No 103/2011 to state-owned enterprises.

98 In April 2016, the average share of women on the boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3 %. For Italy, the figure is 30.0%.<sup>63</sup>

### *C. Application of the legal principles*

99 In Part I the relevant 'International law and material' as well as 'Further pertinent material' has been described in detail. On this basis, the (legal) 'Principles' which govern the framework for the assessment of this complaint have been developed. Against this background, the ETUC assesses situation in Italy as follows.

100 From the outset, it is noted that the ECSR has not found a violation in its Conclusions concerning the relevant Articles but, nevertheless, asked certain questions (as quoted above). However, this situation does not exclude that - after a more detailed examination - the ECSR might come to a different assessment. In the view of the ETUC this would be necessary.

#### *1. Concerning the Gender pay gap*

101 In general terms, it is clear that the Gender pay gap remains above 0%. This is the case for decades. This situation is not at all compatible with the principle of equal pay for work of equal value, even less so when taking into account the requirement of 'effectiveness' enshrined in the introductory words of the relevant articles.

102 More specifically and according to the ECSR's case law, the Gender pay gap has both, a substantial and procedural dimension. This is confirmed by the international law approaches as developed in particular by the CESCR, CEDAW and CEACR (see quotations in Part I). Not fulfilling one of the requirements in respect of these two dimensions leads to a violation.

#### *a) Substance*

103 From a substantive perspective, there are at least the following elements which should (at least in combination) lead to a violation of Article 20 ESC:

- Statistical evidence (see above para. 96) shows that there is still a gender pay gap. Even if it might have been reduced during the last time **any** Gender pay **gap** does not fulfil the non-discrimination requirement based on sex.

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62 As from 2015, the quota stands at 33.3%, non-compliance results in a warning in first instance, followed by financial sanctions and in case of continued non-compliance the potential of dissolution of the board.

63 European Commission, [Factsheet July 2016. Gender balance on corporate boards - Europe is cracking the glass ceiling](http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/1607_factsheet_final_wob_data_en.pdf); [http://ec.europa.eu/justice/gender-equality/files/gender\\_balance\\_decision\\_making/1607\\_factsheet\\_final\\_wob\\_data\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/1607_factsheet_final_wob_data_en.pdf)

- The official statistics are still excluding **small (micro) seized enterprises**. It is therefore most probable that the Gender pay gap is even higher in these enterprises.

104 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

*b) Procedure*

105 Moreover, from a procedural perspective, it appears evident that there is also a violation as the result of eliminating the gender pay gap is not achieved. In particular, it is obvious that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient:

- in principle, the **labour inspectorate** should (be able to) ensure the satisfactory application of this important principle; despite the fact that the respondent State has ratified ILO Convention No. 81 on labour inspection it is obvious that this is not the case (in particular taking into account the nearly total lack of supervision in the SMEs);
- all **other means** to ensure the satisfactory application of the principle of equal value haven proven insufficient.

106 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

## 2. Concerning the (under-)representation in decision-making positions within private companies

107 Concerning the (under-)representation in decision-making positions within private companies this problem has only been addressed in more recent years. As developed in Part I.B.2. this is covered by Article 20 of the Charter. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 20 of the Charter.

*a) Substance*

108 Statistical evidence (see above para. 98) shows that there is still an under-representation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is not to be disputed that women are not sufficiently represented within these bodies.

109 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

*b) Procedure*

110 It would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

111 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

### III. Conclusions

#### A. Substantive conclusions

112 This collective complaint - as all the other 14 complaints concerning the same issues - is of great importance for the full realisation of the very fundamental right of women to non-discrimination. In particular, the continuous denial of equal pay for work of equal value is one of the fundamental problems which still remain in European societies.

113 From the ETUC's point of view it is necessary to come to the following conclusions of a violation of Article 20 of the Charter in relation to

- the Gender pay gap in its substantive (see above II.C.1.a)) and procedural dimensions (see above II.C.1.b)) as well as in relation to
- the under-representation of women in decision-making bodies also in its substantive (see above II.C.2.a)) and procedural (see above II.C.2.b)) dimensions.

114 The Committee might thereby also in particular consider to take account of the recommendations/observations/concerns expressed by the international bodies referred to in II.A. addressed to the respondent state.

#### B. Procedural request

115 Given the high complexity of this case, in particular in relation to possible justifications which might be provided during the further procedure by Governments or others, there will most probably be specific issues which are not yet dealt with in these ETUC Observations.

116 Accordingly, and referring to the example in the case of *MATICA v. Croatia*, the ETUC would be very grateful if it were granted the opportunity to submit additional information following in particular the observations by the Government concerned but also any other relevant observations in this respect.

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