



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

31 October 2017

Case Document No. 5

University Women of Europe (UWE) v. Finland
Complaint No. 129/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 12 October 2017



12 October 2017

Mr Henrik Kristensen
Deputy Executive Secretary
European Committee of Social Rights

Complaint No. 129/2016
University Women of Europe (UWE) v. Finland

OBSERVATIONS ON THE MERITS OF THE COMPLAINT

General

1. The Government recalls its observations of 15 December 2016 and 19 May 2017 on the admissibility of the complaint.
2. The Government regrets to observe that by its decision of 4 July 2017 the European Committee of Social Rights (later, "the Committee"), without prejudice to its decision on the merits of the complaint, declared the complaint admissible as regards Articles 1, 4§2, 4§3, 4§5, 20 and E of the Revised European Social Charter (later, "the Charter") and invited the Government to make written submissions on the merits of the complaint by 13 October 2017.
3. The Government recalls that the present complaint has been lodged by University Women of Europe (later, "UWE") on 24 August 2016.
4. Finally, as regards UWE's multiple allegations presented to the Committee, the Government emphasizes that the fact the Government does not comment each and every allegation does not mean that the Government accepts them. Accordingly, all of UWE's allegations are to be rejected.

Vague, general and not substantiated enough

5. The Government observes that in its decision of 4 July 2017 the Committee further recalled "that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12)".
6. The Government further observes that according to Article 4 of the 1995 Additional Protocol to the Charter, "the complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision".
7. The Government observes that according to the Committee's said decision UWE alleges that the situation in Finland constitutes a violation of Articles 1, 4, 4§3 and 20 of the Charter, read alone or in conjunction with Article E, as well as the 1961 Charter and Article 1 of the 1988 Additional Protocol.
8. The Government points out in this connection that information on Articles accepted by Finland is widely available.
9. The Government recalls in this connection that UWE has lodged the same complaint against 14 other Contracting Parties also having had ratified the 1995 Additional Protocol to the European Social Charter.
10. In addition, the Government notes that many of the allegations invoked by UWE apply to pan-European or global trends and figures.
11. In fact, considering that UWE's complaint consists of nearly 30 pages, Finland is mentioned for the first time on page 4 ("The Committee must do justice to women and find against Finland"). On page 8 UWE states "to improve the laws and regulations of the Council of Europe member states including Finland on gender equality,". On page 9 UWE states again "including Finland". On page 11 UWE states "the relevant laws are out-dated and have no effect in any of the countries which have ratified the Social Charter and the subsequent related texts". On page 12 UWE submits that "Finland has submitted many reports and replied to observations". On page 14 UWE submits that "and, of course, Article 157 of the Treaty on the Functioning of the European Union, under which each member state must ensure that the principle of equal pay for equal work or work of equal value is applied. This is not the case in Finland". Further, on page 16 UWE states that "the Social Charter imposes an obligation of result, not just of means, requiring rights to be put into practice and made effective. Finland fails to meet this requirement and therefore the finding should be against it". On page 18 UWE submits "as these leaders in Finland and other European countries...". On page 20 UWE states "these are political choices, which states including Finland have to take".

12. Further, on page 20 of the complaint UWE misleadingly states "this is clear evidence of bad faith of states, especially that of Finland", as Finland is not separately mentioned in the original source. The Government observes that according to the original source (page 44) mentioned in connection with "Doc. 13"; "Introduce positive duties on employers to integrate equal pay practices. Good practice examples in Sweden and Finland for such positive duties are mentioned in this report".
13. The Government further observes that part IV of the complaint entitled "The Violations of the Charter" appears to focus on three specific aspects, namely 1) equality monitoring bodies, 2) representation of women in decision-making posts in private companies and 3) the actual situation with regard to unequal pay for equal or similar work.
14. On page 16 of the complaint the UWE has referred to "the country report in Finland and in the ILO's Natlex base". Further, while some national Acts in Finland are mentioned, the complaint does not mention which particular part of the Finnish legislation nor practice would allegedly violate any provisions of the Charter.
15. In the Government's view, the above examples demonstrate the very general nature of the complaint and the fact that Finland is for many parts only mentioned in connection with other Contracting Parties.
16. Furthermore, it appears that UWE's references to various sources listed as annexes it has used as grounds for its allegations are somewhat misleading and inaccurate.
17. All in all, UWE's allegations are very vague, general and unsubstantiated, and not supported by any relevant arguments nor evidence in that respect.
18. For instance, on page 23 of the complaint the UWE notes itself that "Finland's score is above that of Europe and of many other countries. Finland is one of the four leading countries, however despite commendable efforts, the result is still not achieved".
19. In the Government's view, there is no indication in the complaint of how the Charter provisions are not satisfactorily applied. The UWE has merely drawn its own conclusions from various sources listed as annexes but has failed to indicate in what respect Finland has not ensured the satisfactory application of the Charter provisions.
20. Accordingly, in the Government's view, the complaint is unsubstantiated as a whole and UWE's allegations should be rejected on these grounds alone.
21. Should the Committee be of different view, the Government presents the following observations below.

The Committee's findings

22. The Government further observes that according to the Committee's said decision "as regards the first ground, concerning the wage gap between men and women for equal, similar or comparable work, UWE alleges specifically the violation by Finland of Article 4§3 and Article 20 of the Charter".
23. The Government notes that the complaint only applies to Article 20 insofar as equal opportunities and equal treatment in terms of pay are concerned. Therefore, the Government's observations shall only concentrate on equal pay aspects where Article 20 is concerned.
24. According to UWE's complaint (page 17); "Currently, Finland fails to comply with the Social Charter with regard to equal pay for women and men for equal, similar or comparable work because its legislation is not effective enough to do so".
25. The Government observes that according to the Committee's interpretation policy, Article 4, paragraph 3 requires that the right of women and men to equal pay for work of equal value must be expressly specified in the legislation (see, for instance Conclusions 2014, Iceland, Luxembourg).
26. According to the Committee, the legislation must offer appropriate and effective means to rectify the situation in cases where pay-related discrimination is suspected. Employees must be able to take their case to the court. The burden of proof must lie with the defendant, and everyone who has suffered from gender pay discrimination must be entitled to sufficient compensation, *i.e.*, compensation sufficient to compensate for the damages suffered by the victim and to prevent similar discrimination in future. In its interpretation policy, the Committee has, among other things, found it relevant whether the national legislation specifies a maximum limit for compensation to be paid in discrimination cases (see, for instance Conclusions 2014, Greece). The Committee has also deemed that the legislation must prohibit dismissal/countermeasures by the employer in a case where the employee makes a demand concerning pay discrimination. In its assessment, the Committee has also paid attention to whether, in disputes, it is also possible to compare pay levels and workplaces outside the employer/workplace in question (see, for instance Conclusions 2014, Finland, Greece, Poland, Czech Republic).
27. The Government notes that the Committee last examined the Articles referred to in the Committee's decision of 4 July 2017 in 2016 (Articles 1 and 20) and 2014 (Article 4, paragraphs 2, 3 and 5) where Finland is concerned.
28. In 2010, the Committee decided that it would review gender pay equality under both Article 4, Section 3 and Article 20, *i.e.*, every two years. In its conclusions on Article 4 in 2014, the Committee examined pay comparisons and asked for more information on this in its next report. The Committee noted that the situation in Finland was not consistent with Article 4§3 of the Charter in that Finnish legislation does not enable the restoration of the employment relationship in a situation where an employee has been dismissed due to a claim on pay discrimination.

29. Finland delivered information on pay comparisons as it reported on Article 20 in its 11th periodic report in October 2015. In its conclusions on the report (2016) relating to Article 20, the Committee noted the measures that had been taken during the previous reporting period to reduce the gender pay gap and promote equal opportunities. The Committee also noted Finland's further clarifications relating to pay comparisons. For the next reporting round, the Committee asked Finland to report on, among other things, the practical enforcement of provisions of the Act on Equality between Women and Men that entered into force in 2015, including complaints of gender-based discrimination in working life and their results (incl. any compensation specified for employees) as well as employers' pay surveys and gender equality planning. When waiting for the information requested, the Committee noted that the situation in Finland was consistent with Article 20 of the Charter.

Observations on UWE's allegations concerning wage gap between men and women for equal, similar or comparable work

Legislation and measures in Finland

30. The Government notes that at the moment, the average gender pay gap in the entire Finnish labour market is 16.3%. When reviewed by sector, the gender pay gap is smaller: on average, women's earnings amount to 84.9% of men's earnings in the private sector, 86.5% in the municipal sector and 86.8% in the State sector. Major underlying factors include the education and career choices made by women and men. In the Finnish labour market, men and women mainly work in different fields, professions and positions, including supervisory and managerial positions. This segregation of the labour market accounts for a significant proportion of the gender pay gap. There are differences in the labour market position of women and men, and atypical employment relationships are more common for women than for men. Women also use more family leave than men do, which affects their careers and pay. The determination and level of employees' pay are influenced by collective agreements and pay systems applied in the field and by the company. There are very many structural factors behind the gender pay gap.
31. Finland promotes equal pay using various methods in a diverse manner. The legislation prohibits pay discrimination and obliges employers to promote gender equality in terms of pay, among other things. Equal pay is promoted by both the Government's general gender equality programmes and tripartite equal pay programmes. Narrowing the gender pay gap requires the positive development of women's salaries and wages. This positive development can be supported by means of structural and other changes in working life. Such changes include the improvement of women's careers and their access to better-paid professions, reduction of segregation and more equal sharing of family leave between parents.
32. In Finland, gender equality and equal pay are governed by the Constitution of Finland (731/1999) and the Act on Equality between Women and Men (609/1986).

33. Section 6 of the Constitution prohibits gender-based discrimination and obliges public authorities to promote gender equality in working life, particularly in terms of pay. The provision includes an obligation for public authorities, and legislators in particular, to take measures and provide protection actively. This provision of the Constitution is further specified by the provisions on the duty to promote gender equality laid down in the Act on Equality between Women and Men. These provisions include the duty of authorities to promote gender equality (Section 4), employer's duty to promote gender equality (Section 6) as well as the provisions on the employer's gender equality plan and pay survey (Sections 6a and 6b).
34. The Act on Equality between Women and Men includes provisions on promoting gender equality, prohibition of gender-based discrimination, monitoring of the Act and means of legal protection. Section 7 of the Act on Equality between Women and Men specifies a *general prohibition of discrimination*, also defining what the Act means by gender-based discrimination. The provision prohibits both direct and indirect discrimination based on gender. After the amendment that entered into force in 2015, treating someone differently because of gender identity or gender expression is also prohibited. Section 8 of the Act on Equality between Women and Men expressly prohibits direct and indirect discrimination in working life based on gender, including pay and other terms of employment. In addition, Section 6 of the Act on Equality between Women and Men requires all employers to promote equality between women and men in the terms of employment, especially in pay.
35. From the beginning of 2015, the Act was amended to make the gender equality plan and pay surveys work more effectively in eliminating the gender pay gap. According to the Act on Equality between Women and Men, if the workplace has at least 30 employees, the employer must prepare a gender equality plan dealing particularly with pay and other terms of employment (Section 6a) and conduct a pay survey (Section 6b). The pay survey is used to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value.
36. The Act on Equality between Women and Men also includes provisions on conducting the pay survey and dealing with its results. If the pay survey reveals clear pay differences between women and men, the amended Act requires the employer to analyse the reasons and grounds for these differences. If there is no justification for the pay differences, the employer must take appropriate measures to rectify the situation. The representatives of the personnel must have sufficient opportunity to participate and influence the preparation of the gender equality plan, so the Act now stipulates that employees must be informed about the plan. The Government has supported the implementation of the amended Act by organising training in various cities. The Government has also promoted the implementation by publishing a gender equality guide, *Tasa-arvolaki 2015* (Act on Equality between Women and Men 2015).

37. The Act on Equality between Women and Men has also been amended several times before. In 2005, it was comprehensively amended with the purpose of implementing EU directives, boosting gender equality planning and improving its results as well as promoting equal pay. One of the provisions added at that time *prohibits countermeasures by the employer* (Section 8a). According to the Section, the action of an employer shall be deemed to constitute discrimination prohibited under the Act if a person is given notice or otherwise treated less favourably after they have appealed to a right or obligation laid down in the Act or taken part in investigating a matter concerning gender discrimination.
38. Adherence to the Act on Equality between Women and Men is monitored by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal (Act on the Ombudsman for Equality, 1328/2014, and Act on the National Non-Discrimination and Equality Tribunal, 1327/2014). The task of the Ombudsman for Equality is to monitor adherence to the Act on Equality between Women and Men and, in particular, the prohibition of discrimination and prohibition of discriminatory vacancy announcements. The work of the Ombudsman for Equality focuses on providing advice and guidance. Everyone who suspects they have been discriminated against can ask the Ombudsman for Equality for instructions and advice in the matter. One of the important duties of the Ombudsman for Equality is to give statements on whether the Act on Equality between Women and Men has been breached in individual cases. The main purpose of the statements is to help people who suspect discrimination to assess whether the Act on Equality between Women and Men has been breached in their case and whether they have reason to take further legal or other measures. The majority of contacts to the Ombudsman for Equality are about working life. In particular, these contacts are linked with pregnancy and parenthood, recruitment and pay. Courts are not bound by the statements of the Ombudsman for Equality. In the event that the instructions or advice of the Ombudsman for Equality are not followed, the Ombudsman has the opportunity to take the case to the National Non-Discrimination and Equality Tribunal. The Tribunal may prohibit the employer from continuing or repeating the discrimination, under penalty of a fine, if necessary. A trade union confederation may also take a case to the Tribunal.
39. If the Ombudsman for Equality notices that the employer does not prepare a gender equality plan in accordance with the Act on Equality between Women and Men despite the Ombudsman's instructions and advice, the Ombudsman may set a reasonable deadline by which the planning obligation must be fulfilled. If the employer fails to meet the deadline, the National Non-Discrimination and Equality Tribunal may, on the Ombudsman's proposal, oblige the employer to prepare the plan by a new deadline, under penalty of a fine, if necessary.
40. Work discrimination has been criminalised under Chapter 47, Section 3 of the Criminal Code of Finland. According to the provision, an employer, or a representative thereof, who, when advertising for a vacancy or selecting an employee or during employment, without an important and justifiable reason puts an applicant for a job or an employee in an inferior position because of, among other things, sex or family status, shall be sentenced for work discrimination to a fine or to imprisonment of up to six months.

41. The Employment Contracts Act (55/2001) includes a specific provision on the employer's obligation for equal treatment and prohibition of discrimination, complementing the bans on discrimination in the Act on Equality between Women and Men. According to Chapter 2, Section 2 of the Employment Contracts Act (1331/2014), an employer must treat all employees equally, unless deviating from this is justified in view of the duties and position of the employees. According to Government Bill (HE 19/2014 vp), the employer should treat employees in similar and comparable situations in the same way. The comparability of situations would be decided on an employer-specific basis, taking into account the employees' position and duties at the workplace.
42. The employer should also follow the requirement for equal treatment when granting benefits based on the employment relationship. Differences between benefits granted in comparable situations could only be based on reasons specified by law. According to legislative drafts, the requirement for equal treatment could, in some situations, also require the employer to take active measures to even out the differences within a reasonable period of time. In this context, legislative drafts refer to Supreme Court decisions 2013:10 and 2013:11, which assessed the relationship between differences in pay due to pay systems based on various collective agreements and the requirement for equal treatment. Even though the application of various pay systems was not deemed in the decisions to breach the prohibition of discrimination, the employer should, according to the principle of equal treatment of employees, strive to eliminate such differences in pay within a reasonable period of time if possible.
43. The reason for different treatment may be an employee's different position in the employer's organisation. The number and type of benefits based on the employment relationship may also vary according to the employee's position and duties.

On the termination of employment, limitation period and suit-filing period

44. The Government observes that in its complaint UWE appears to allege that if a woman employee dares to demand equal pay for equal, similar or comparable work, she runs a considerable risk of being dismissed quite rapidly, albeit on another pretext. According to UWE the limitation period that applies in the area of pay disputes can be considered short.
45. The Government clarifies in this connection that on the contrary, in Finland, the threshold for terminating an employment contract is very high. Dismissal on individual grounds, *i.e.*, for personal reasons, always requires an appropriate and serious reason, such as a severe breach of obligations or negligence. When an employee is dismissed on individual grounds, it is often the case that the parties have lost confidence in each other and the prerequisites for continuing the employment relationship no longer exist. In situations where the employee's behaviour has been reprehensible, dismissal on individual grounds always requires that the employee be warned and heard in advance. The legislation stipulates even stricter prerequisites for terminating an employment contract.

46. Further, dismissal on collective grounds, on the other hand, requires that the amount of work available has substantially and permanently decreased due to financial, production-related or reorganisational reasons. However, the employment contract must not be terminated if the employee can be transferred to or trained for other duties.
47. According to Chapter 13, Section 9, paragraph 1 of the Employment Contracts Act (743/2003), employees' pay claims become statute-barred five years after the due date, unless the period of limitation has been interrupted before that time. The same period of limitation also applies to other claims referred to in the Employment Contracts Act. However, the period of limitation concerning bodily injury caused to an employee is 10 years. After the termination of employment, a claim as referred to in subsection 1 will expire unless suit is filed within two years of the date on which the employment ended. This provision covers unpaid salaries and wages as well as compensation for illegal dismissal, for example. If the provisions of the collective agreement on which the employee's claims are based are manifestly ambiguous, however, the claim will become statute-barred as laid down in subsection 1.
48. The short suit-filing period after the end of employment has been considered appropriate for the quick settlement of any disputes at the end of the employment relationship. The short suit-filing period after the end of employment can also be justified in terms of evidence presented in court (Government Bill, HE 157/2000 vp).

Determination of pay in Finland

49. The Government notes that there is no act on minimum wages in Finland. This means that the employer and employee can agree on the pay in the employment contract. However, this freedom of contract is limited by the pay provisions specified in the collective agreement that binds the employer. In the employment contract, the employer cannot agree on a pay lower than the minimum pay provisions specified in the binding collective agreement.
50. If the employer is a member of an employers' organisation that has signed a collective agreement, they must follow the pay provisions of the collective agreement ('normally applicable collective agreement') on account of its membership.
51. Some collective agreements have been confirmed as generally applicable in the field ('generally applicable collective agreement'). This means that even if the employer is not a member of the employers' organisation that has signed the collective agreement, they must follow the pay provisions specified in the collective agreement confirmed as generally applicable in the field.
52. If neither a normally applicable collective agreement nor a generally applicable collective agreement is applicable to an employment relationship, and the employer and employee have not agreed on the remuneration to be paid for the work, the employee shall be paid a reasonable normal remuneration for the work performed in accordance with Chapter 2, Section 10 of the Employment Contracts Act.

53. Adherence to the Employment Contracts Act is monitored by the labour protection authorities. The labour protection authorities also monitor adherence to generally applicable collective agreements. The monitoring is regulated by the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006). Adherence to collective agreements is also monitored by employers' and employees' organisations.
54. Discrimination in working life may be subject to compensation which shall be claimed by legal action brought at the District Court. In the event of pay discrimination, action for compensation shall be brought within two years of the violation of the discrimination prohibition. When the amount of compensation is being determined, the nature, extent and duration of the discrimination shall be taken into account. Compensation may be imposed regardless of whether the discrimination causes financial damage. It is compensation for the insult caused by the discrimination. The compensation shall be paid by the party who has violated the discrimination prohibition. The compensation shall amount to no less than EUR 3,570 (June 2015). However, the court may reduce the compensation beyond the minimum amount prescribed above, or the liability to pay compensation may be waived completely, if this is deemed reasonable in view of the offender's financial situation and attempts to prevent or eliminate the effects of the action. Generally, no maximum amount has been determined for the compensation. An exception to this are cases concerning employee recruitment, where the compensation payable shall not exceed EUR 17,840 (June 2015) for an employee in regard to whom the employer is able to show that she/he would not have been chosen for the job even if the choice had been made on non-discriminatory grounds. In addition to or instead of compensation, the party discriminated against may claim compensation for financial loss incurred due to gender-based discrimination. The selection of sanctions for discrimination is supplemented by criminalisation under the Criminal Code. Cases of pay discrimination may also be subject to the Criminal Code's provisions on work discrimination and the sanctions prescribed.
55. In 2014, the Ministry of Social Affairs and Health published a report on the efficiency of the monitoring provisions laid down in the Act on Equality between Women and Men. The purpose was to assess how the availability of legal protection could be improved in Finland by developing the monitoring system specified in the Act on Equality between Women and Men. The primary objective of the work was to assess the efficiency of the monitoring system specified in the Act as a whole, taking into account how the gender equality legislation relates to other relevant legislation and proposing development measures to improve the monitoring and legal protection (low-threshold legal protection in particular). According to the report, courts rarely deal with discrimination cases. It highlighted that the overall monitoring mechanism has been found difficult from the perspective of the party discriminated against. On the basis of the report, it was proposed that the monitoring provisions laid down in the Act on Equality between Women and Men be developed such that, among other things, the Ombudsman for Equality would have the authority to take measures to bring about reconciliation in cases relating to adherence to the Act as well as the authority to request the National Non-Discrimination and Equality Tribunal to confirm the reconciliation.

56. Since then, the Act on Equality between Women and Men has been complemented with the opportunity for reconciliation as a new means of legal protection. The provisions laid down in the Act on Equality between Women and Men on the promotion and confirmation of reconciliation entered into force in November 2016. The opportunity for reconciliation improves the legal protection of victims of discrimination by strengthening the low-threshold means of legal protection specified in the Act. The opportunity for reconciliation is an important element for both parties involved in the dispute. The procedure may be a good alternative to legal proceedings. The use of the reconciliation procedure is voluntary and based on mutual consent. The goal is to reach an amicable settlement. Monetary compensation may also be agreed upon during the reconciliation procedure. The National Non-Discrimination and Equality Tribunal may be requested to confirm the reconciliation, and a reconciliation confirmed by the Tribunal shall be enforced in the same manner as a final judgment. The opportunity for reconciliation also applies to cases of pay discrimination as referred to in the Act on Equality between Women and Men.
57. According to Section 9a of the Act on Equality between Women and Men, if a person considers that they have been a victim of discrimination under the provisions of the Act, relating to pay, for example, and presents a matter to a court of law or to a competent authority and the facts give cause to believe that the matter is one of gender discrimination, *the burden of proof* lies on the defendant. The defendant must prove that there has been no violation of gender equality but that the action was for an acceptable reason and not due to gender. This also applies to pay-related discrimination.
58. Legal proceedings often require a legally trained assistant. Legal aid can be applied for and paid either partially or fully by the State.
59. The Government notes that in its complaint UWE alleges incorrectly that occupational safety inspectors increasingly fail to investigate questions and fail to report breaches that could lead to a criminal procedure.
60. In this connection, the Government clarifies that gender-based discrimination or adherence to the Act on Equality between Women and Men is not monitored by labour protection authorities. However, labour protection authorities monitor the provisions of the Employment Contracts Act relating to gender discrimination. These may include rights relating to family leave and protection against termination in the case of an employee who is pregnant. If there are likely grounds for suspecting that a work discrimination offence has taken place, the labour protection authorities must report this to a public prosecutor. Even though the labour protection authorities are also obliged to report suspected cases of gender-based work discrimination, this does not mean taking monitoring measures in cases outside their authority. Discrimination prohibitions under the Act on Equality between Women and Men may be used to facilitate the assessment of the punishability of the offence and the meeting of the essential elements of a criminal offence. The division of monitoring duties between the Ombudsman for Equality and the labour protection authorities requires co-operation. If the material content of the offence is clearly covered by the Act on Equality between Women and Men, the case shall be monitored by the Ombudsman for Equality.

61. Adherence to the Non-discrimination Act in working life is monitored by the labour protection authorities. In suspected cases of discrimination with multiple grounds for discrimination, one of which is gender, monitoring requires close co-operation between the Ombudsman for Equality and labour protection authorities in order to determine the competent authority. In suspected cases of discrimination based on both gender and grounds for discrimination prohibited by the Non-discrimination Act, the Ombudsman for Equality shall monitor the case as regards gender-based discrimination and the labour protection authority as regards grounds for discrimination prohibited by the Non-discrimination Act. In the event of intersecting discrimination, where a number of factors together lead to discrimination, the competent authority is the labour protection authority, even if one of the grounds for discrimination is gender.
62. The Ministry of Social Affairs and Health has closely followed the efficiency of the Act on Equality between Women and Men, particularly in terms of gender equality plans and pay surveys at workplace and has, among other measures, conducted an extensive study of the comprehensiveness and quality of gender equality plans and pay surveys at workplaces. The study looked at how the amendments of the Act on Equality between Women and Men in 2005 have influenced planning. The number of gender equality plans had increased: they had been prepared at over 60% of workplaces. Pay surveys had been conducted by 60% of workplaces. However, the pay surveys were rough, and there was room for improvement in their quality. Nevertheless, workplaces were well aware of the obligation for gender equality planning. The information provided by the study was utilised in assessing the efficiency of the Act on Equality between Women and Men in terms of gender equality plans. The study constituted the key background material for the amendment of the Act. As part of the equal pay programme, trade union confederations are analysing the comprehensiveness and quality of gender equality plans and pay surveys. The analysis will be completed in late 2017.
63. Finland carried out a tripartite *Equal Pay -programme* in 2006–2015. During the programme, the gender pay gap narrowed from approximately 20% by three percentage points. The 2016–2019 Equal Pay -programme is now underway. The Government has allocated resources for the programme. The main goals of the equal pay programme are to narrow the gender pay gap and realise the equal pay principle of the Act on Equality between Women and Men. The programme closely monitors the achievement of the goals using various indicators. The Government also supports gender equality and equal pay by means of a Gender Equality -programme.
64. The 2006–2015 Equal Pay -programme included the key factors and corrective measures relating to equal pay, and the current 2016–2019 programme continues by focusing on the most important and efficient means. The programme influences the level and determination of pay and strives to change the traditional gender division in education and working life. A third theme area is the reconciliation of work and family life. The equal pay programme has realised significant projects in the key theme areas. In particular, investments have been made in pay systems, pay and contract policies, workplace gender equality plans, reducing segregation in working life and improving women's careers.

65. The Government has supported the development of pay systems in various ways. Particular efforts have been taken to promote the development of systems based on how demanding the work is. The situation of pay systems was investigated by conducting a comprehensive, extensively statistics-based study on the effects of new pay systems on women's and men's pay and the gender pay gap (2009–2010). The study provided completely new statistical information about the effects of new pay systems on gender equality. According to the results, the revamp of pay systems is directly linked with the narrowing of the gender pay gap. The gender pay gap had most clearly narrowed for people in the most demanding positions. No similar narrowing of the gender pay gap could be detected for those in less demanding positions. The results confirm the gender equality benefits of pay systems that are based on how demanding the work is. The results also highlight factors that must be taken into account in the revamp of pay systems in terms of different groups of employees, for example. The 'Tasa-arvoa palkkaukseen' ('Gender Equality into Pay Systems') project supported development work in 18 target organisations (2009–2011). The project produced information on how pay systems supporting equal pay and incentive to work should be developed, implemented and applied. It also resulted in a guidebook regarding the development of pay systems.
66. The Equal Pay -programme has closely monitored the effects of collective agreements on women's and men's pay by having the Ministry of Finance's income and cost development committee study the effects of collective agreements on women's and men's pay and the gender pay gap every couple of years. The latest assessment covers the years 2013–2016. According to the assessment, the gender difference in average earnings for regular working hours narrowed by 0.8–1.5 percentage points in various sectors from the end of 2012 to the end of 2016. Looking at the entire labour market, the assessment suggests that women's average earnings amounted to 82.7% of men's average earnings at the end of 2012 and 83.6% at the end of 2016. According to the assessment, the gender pay gap has been narrowed by monetary and mixed raises, measures specified in collective agreements, local solutions and structural factors. Looking very roughly by pay type, it can be stated that the gender pay gap is the smallest in basic salaries and the largest in total salaries. In 2012–2013, gender equality was improved in private service sectors by conducting a development project that assessed the pay level and pay systems in the sectors from the equal pay perspective and provided recommendations for the development of pay systems. According to the results of private service sectors, there is room for improvement in the implementation of gender equality plans and pay surveys at workplaces. Pay systems based on job titles were found to be not without problems from the perspective of equality. The recommendations resulting from the study have accelerated the development of pay systems.
67. The Ministry of Social Affairs and Health carried out the extensive 'Puhutaan palkoista' ('Let's Talk About Pay') communications campaign in 2013 and 2014. The campaign aimed to increase awareness of pay issues and transparency of pay systems as well as encourage measures to eliminate unjustified differences in pay.

68. In the Finnish labour market, men and women mainly work in different fields, professions and positions, including supervisory and managerial positions. This segregation of the labour market accounts for a significant proportion of the gender pay gap. The objective of the Equal Pay -programme is to increase the number of employees in gender-equal professions and the proportion of women in supervisory and managerial positions. The programme includes significant investments in the elimination of segregation.
69. In 2013–2014, the Ministry of Social Affairs and Health conducted an extensive statistical project that studied the effects of changes in working life on the labour market position of women and men and their pay in the private sector. The development of statistical materials enabled the study to be expanded to the State and municipal sector in 2014–2015. Both statistical studies look at the change in the professional structure within the past 20 years and its effects on the gender pay gap. According to the results gained, gender-based professional segregation has remained strong in spite of the changes in the professional structure. In the private sector, the change in the professional structure has had no positive effect on the narrowing of the gender pay gap. In the State sector, the change in the professional structure clearly reduced the gender pay gap. In the municipal sector, no narrowing of the gender pay gap could be seen despite the increase in women's level of education. The studies provided new statistical information about how the professional structure has changed and how the changes have affected the gender pay gap. The study also provided some indications of the key professions for narrowing the gender pay gap and the areas that should be emphasised when investing in equal pay.
70. Women's careers have also been supported by means of a development project: In 2013–2014, the 'NaisUrat' ('Women's Careers') project supported the career development of female clerical employees and women in specialist and middle management positions in small and medium-sized enterprises. The research-assisted development project provided information about how women's careers can be promoted and what can be done at the organisational level in particular. The results can be utilised as background information for equal pay measures and as a framework for gender equality plans at workplaces.
71. Education has a significant impact on women's and men's labour market position, career development and equal pay. Gender-based division in education and career choices lays a foundation for gender-based division in working life. It is necessary to reduce the segregation in upbringing, teaching and student counselling. The Act on Equality between Women and Men was amended in 2015 such that the gender equality planning obligation is also applied to education providers and schools as referred to in the Basic Education Act. Other educational institutions were already covered by the gender equality planning obligation. At the moment, a substantial research project relating to the elimination of segregation is being conducted in the field of education, aiming to influence young people's choices of education and find ways to eliminate the segregation in female- and male-dominated fields of study. The study aims to establish what conceptions young people have of professions and how gender stereotypes influence their education and career wishes. The Government has also carried out other development projects relating to the reduction of segregation.

72. Two overall assessments have been made of the Equal Pay - programme by external, independent assessors. The first assessment covered the years 2007–2010 and the second the years 2010–2015. They assessed the overall success and effectiveness of the programme. The latter assessment noted that it is important and relevant to continue the programme.
73. The unequal division of care responsibility and family leave and long absences from working life in particular have a harmful impact on women's careers and serve to maintain the gender pay gap. In 2010, the Government extended the "daddy month" by two weeks and, from the beginning of 2013, the father's quota of parental leave, paternity leave, was extended to nine weeks. Prime Minister Sipilä's Government has decided to revamp the family leave system late in its term. Among other things, the revamp aims to increase equality in working life and parenthood, facilitate the return to work from family leave and improve the employment rate.

Work for equality in State administration

74. According to the Government decision-in-principle on State personnel policy line (30 August 2001), equality is one of the basic values of State administration. The objectives of the Act on Equality between Women and Men (609/1986) are to prevent discrimination based on gender, to promote equality between women and men, and thus to improve the status of women, particularly in working life. In addition, the State Civil Servants Act (750/1994) and Employment Contracts Act (55/2001) include provisions on equal treatment. The requirement of equal treatment is supplemented by bans on discrimination in the Constitution of Finland (Section 6), Criminal Code of Finland (Chapter 11, Section 9), Non-discrimination Act (Section 8) and Act on Equality between Women and Men (Sections 7–9).
75. According to the Government Recommendation on Promoting Equality between Women and men in Government Agencies (2/2007), work for equality in State administration is included in regular workplace planning and daily management. According to the Act on Equality between Women and Men, each agency with at least 30 permanent employees shall at least every two years prepare a gender equality plan that includes a pay survey of the entire personnel. In 2017, 99% of the agencies and bodies with a planning obligation had prepared or were preparing a gender equality plan and 81% had conducted or were conducting a pay survey. In gender equality planning and monitoring, agencies and bodies get the required personnel statistics for their own personnel and control groups from the State's common Tahti information system.
76. In 2012, the Government issued a Recommendation for Agencies and Bodies on the Estimation of Gender Influences of Specific Collective Agreements. Accordingly, agencies and bodies have estimated the gender influences of a number of specific collective agreements agreed upon at agencies.

77. According to the Government decision-in-principle on Central Government Management Policy (30 April 2008), the Government promotes the applying and appointment of women to management posts. The Government has prepared instructions for agencies and bodies on the recruitment of State administration personnel (2013) and separately for top management selection criteria (2011). In addition, the Government has issued instructions (29 November 2016) on principles to be followed for filling offices in order to make the application and selection procedure open, professional and equal and fair for all applicants. The Government also coordinates the 'Naisjohtajat uralla eteenpäin' ('Career advancement for female directors') network, which offers peer support for female directors and managers.

Women and men in State administration

78. In December 2016, State agencies and bodies employed 72,981 people, amounting to 3.0% of the employed labour force. Of the personnel, 49% were women and 51% men. Even though the shares of women and men are equal, on average, men and women work in different fields and positions. The State's business sector services and research activities are gender-equal fields. The fields most clearly dominated by women are teaching and education services as well as social, employment and health services. By contrast, security operations are clearly dominated by men. In terms of duties, specialist and practical positions are gender-equal, whereas in managerial positions, the proportion of men was 65% and that of women 35%. In the top management of ministries, the proportion of women is even a bit higher. In the past few years, the proportion of women has increased in both specialist and managerial positions.
79. State agencies and bodies are comprehensively using analytical pay systems based on the requirements of the position and the employee's performance. Women and men working for the same employer in practice receive equal pay for equal work or equal value: in 2016, women's earnings amounted to 98.5% of men's earnings, taking into account the requirements of the position and the employer. The value of the equal pay index increased and the gender pay gap decreased by over 2.1 percentage points from 2006 and by 0.8 percentage points from 2010 to 2016.

Observations on UWE's allegations concerning representation of women in decision-making posts in private companies

80. The Government observes that according to the Committee's aforementioned decision of 4 July 2017, "as regards the second ground, concerning the representation of women in decision-making posts in private companies, UWE invokes relevant national legislation and, in support of the allegation that these provisions are not applied in practice, also refers to statistical data reported by European and national sources concerning the performance of Finland in this area".

81. The Government further observes that in its complaint, UWE also refers to the low proportion of women among chairs of company boards (4.3%) and alleges that there are no women CEOs in Finland. UWE refers to an EU survey of January 2016 according to which the percentage of women on the boards of large companies in Finland is 29.2% and claims that this shows that the legal requirement has little effect.
82. The Government notes in this connection that the average proportion of women among the board members of listed companies was 27% after the annual general meetings held in spring 2017. The proportion was 33% in large listed companies, 27% in medium-sized listed companies and 23% in small listed companies. In 2008-2017, the proportion of women on the boards of all listed companies has actually increased from 12% to 27%. In 2014-2017, the number of women CEOs in listed companies has increased from one to seven. In 2016, six women acted as chairs of boards in listed companies (5% of all chairs).
83. The Government further notes that in companies fully owned by the State, the proportion of women on the boards has long been over 40%, amounting to 44% in 2017. In listed companies with the State as the majority shareholder, the proportion of women on the boards has also been over 40% in the past few years. In listed companies with the State as a minority shareholder, the proportion of women on the boards was 35% (2017). In 2016, the proportion of women on the boards of all companies in which the State had appointment authority was approximately 43%.
84. The Government notes that one of the goals of the Government's 2016-2019 Gender Equality -programme is increasing gender equality on the boards of listed companies. In a Government decision-in-principle (2015), the Government set the goal that the proportion of both women and men among board members of large and medium-sized listed companies is at least 40% by 1 January 2020. The Government will monitor the development and assess the need for legislation in autumn 2018. It is the Government's objective to achieve gender equality on boards according to the recommendations of the Securities Market Association's Corporate Governance Code and by the companies' own actions (Corporate Governance Code's recommendations for the representation of both genders on company boards and for company-specific objectives and measures).
85. In addition, the Government notes that since 2004, the Government has been implementing a programme to increase the proportion of women on the boards of State-owned companies as part of the implementation of its gender equality programme. This work has yielded results. The goal is that the proportion of both women and men among board members of companies in which the State is the sole or majority shareholder is at least 40%. In companies in which the State is a minority shareholder, the State must promote equality such that the companies appoint candidates for board membership in a manner that meets the equality objectives. From 2016 onwards, the proportions of women and men on the boards and management teams of State-owned companies shall be annually reported in the annual report of the Finnish Government.

Conclusion

86. In conclusion, the Government recalls that UWE has not been able to substantiate any of its allegations concerning Article 4§3 and 20 alone or in conjunction with Article E of the Charter.
87. Furthermore, UWE has not been able to demonstrate at all in which way Finland would have violated Articles 1, 4§2 and 4§5 alone or in conjunction with Article E of the Charter.
88. In respect of the merits of the complaint, the Government notes that when in the present case the situation of the Finnish domestic legislation is assessed holistically and comprehensively with the Charter, the only available conclusion is that the relevant provisions in aggregate do fulfil the obligations set by Articles 1, 4§2, 4§3, 4§5, 20 and E of the Charter.
89. Accordingly, there is no violation of Articles 1, 4§2, 4§3, 4§5, or 20 alone or in conjunction with Article E of the Charter in the present case.

Accept, Sir, the assurance of my highest consideration.



Krista Oinonen
Agent of the Government of Finland
before the European Committee of Social Rights
Director, Unit for Human Rights Courts and Conventions