



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

31 October 2017

Case Document No. 5

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

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 13 October 2017

UNIVERSITY WOMEN OF EUROPE (UWE)

(Complainant)

-and-

IRELAND

(Respondent)

Complaint No. 132/2016

SUBMISSIONS OF THE RESPONDENT ON THE MERITS

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Introduction

1. This collective complaint (“the Complaint”) concerns the application of the 1996 European Social Charter (“the Charter”) to the principle of equal pay for women and men for equal, similar or comparable work in Ireland. The Complainant has alleged breaches by the Respondent of Articles 1, 4, 4§3, 20 and E of the Charter.
2. The Respondent strongly opposes the alleged breaches of the Charter. In 2016, Ireland was subject to review under Article 20. The Committee found that Ireland was in conformity with the Charter¹. In 2014, Ireland was subject to review under Article 4.3 and was found to be in conformity². The Respondent contends that these reviews considered all matters relevant to this complaint and that there has been no change in the situation in Ireland since this time.
3. The Respondent will oppose the Complaint on the grounds that that the Employment Equality Act 1998 (as amended)³ provides robust legislative protections prohibiting discrimination and inequality in conditions of employment. Gender discrimination is expressly prohibited by this legislation, and the principle of equal pay for equal work is provided. The Respondent submits that through the Workplace Relations Commission there exists an effective and efficient mechanism where complaints of gender discrimination can be resolved through mediation or adjudication. Complaints can also be lodged in the Circuit Court. If a complaint is upheld, the Workplace Relations Commission or Circuit Court can impose a range of sanctions, including compensation, reinstatement and directions to the employer on actions going forward. There is no limit to the compensation that can be awarded in the Circuit Court for gender discrimination.
4. The Respondent Government continues to strive to eliminate the gender pay gap through a range of multi-stakeholder policies. This was a priority listed in the current *Programme for a Partnership Government (Appendix 2)* and is being pursued through the National Strategy

¹. Conclusions - Ireland- 2016.

². Conclusions - Ireland- 2014.

³. A consolidated version of this legislation is attached as **Appendix 1**

for Women and Girls, 2017-2020 (**Appendix 3**), a wide ranging document that sets specific and time measured goals that will make a real difference to the position of women in Ireland.

5. Further, the complaint presented by the Complainant is of a generalised nature and is not sufficiently particularised. The Complainant has failed to adduce any evidence and relevant arguments that the Respondent is in breach of the Charter. The majority of the documents appended to the complaint are of general application and do not relate specifically to the Respondent. Accordingly, it is open to the Committee to dismiss the complaint as one lacking any substance and the Respondent urges the Committee to consider dismissing the Complaint on this basis.

(A) Prohibition of Gender Discrimination in Legislation

6. The Complainant alleges that “[c]urrently, Ireland fails to comply with the Social Charter with regard to equal pay for women and men for equal, similar or comparable work, because its legislation is not effective enough to do so.”⁴ Of the documents submitted by the Complainant under the heading “What is the actual situation in Ireland with regard to unequal pay for women and men for equal or similar work?”, only one document discusses Ireland in any substantive manner. The Respondent strongly refutes this allegation and contends that the Complainant has provided no evidence as to the alleged lack of effectiveness of this legislation.
7. The principle of equal pay between men and women is protected and implemented in Ireland in the Constitution and through legislation.
8. Article 40.1 of the Constitution of Ireland states:

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

⁴. Complaint No. 132/2016, page 17.

Article 45 states that:

“The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution.

...

2. *The State shall, in particular, direct its policy towards securing:-*

(i) That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.”

9. Discrimination in the employment relationship is prohibited by the Employment Equality Act 1998 (as amended). It prohibits discrimination in the following areas:

“(a) access to employment,

(b) conditions of employment,

(c) training or experience for or in relation to employment,

(d) promotion or re-grading, or

(e) classification of posts”⁵.

10. Section (6)(2)(a) of the Employment Equality Act 1998 prohibits discrimination in the employment relationship on the grounds of gender, providing:

“6 (1)For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where –

A person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the “discriminatory grounds”) which—

(i) exists,

⁵ Section 8(1) of the Employment Equality Act 1998 (as amended).

(ii) existed but no longer exists,
(iii) may exist in the future, or
(iv) is imputed to the person concerned,
(b) a person who is associated with another person—
(i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and
(ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.

(2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are—

*(a) that **one is a woman and the other is a man** (in this Act referred to as “the gender ground”), ...”*

11. Indirect discrimination is prohibited in respect of remuneration under section 19(4) of the 1998 Act, which provides:

“ (a) Indirect discrimination occurs where an apparently neutral provision would put persons of a particular gender (being As or Bs) at a particular disadvantage in respect of remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the persons referred to in that paragraph shall each be treated for the purposes of subsection (1) as complying or, as the case may be, not complying with the provision concerned, whichever results in the higher remuneration, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

(c) In any proceedings statistics are admissible for the purpose of determining whether this subsection applies in relation to A or B.”

12. The Employment Equality Acts have a wide scope and the definition of employee is broad, covering permanent employees, part-time and temporary employees, public and private sector employment, vocational training bodies, employment agencies and trade unions, professional and trade bodies, self-employed people, partners in partnerships, and State and local authority office-holders. It also extends to employment relationships that have terminated.⁶

13. Section 21 of the Employment Equality Act 1998 provides that an equality clause is implied in the contract of employment.

(B) The Principle of Equal Pay for Equal Work in Legislation

14. The Committee has held that the principle of equal pay for equal work must be provided for expressly in legislation⁷. This is provided for in Section 19 of the 1998 Act, which states:

“19.—(1) It shall be a term of the contract under which A is employed that, subject to this Act, A shall at any time be entitled to the same rate of remuneration for the work which A is employed to do as B who, at that or any other relevant time, is employed to do like work by the same or an associated employer”

15. This is a key protection for the right of women and men to receive the same rate of payment for like work by the same, or an associated employer.

16. The definition of “pay” as provided for is broad as required by the Committee under its previous considerations of Article 4§3. Referred to as ‘remuneration’ in the legislation, the definition is as follows:

“ ‘remuneration’, in relation to an employee, does not include pension rights but, subject to that, includes any consideration, whether in cash or in kind, which the

⁶. *Equality Law in the Workplace*, Alistair Purdy, Bloomsbury, 2015, 4.08.

⁷. Conclusions XV-2, Addendum, Slovak Republic, p. 151.

employee receives, directly or indirectly, from the employer in respect of the employment.”⁸

17. The burden of proof in relation to discrimination complaints can be moved to the employer in certain circumstances.⁹ This is in compliance with previous interpretation of Article 20 by the Committee¹⁰ which states that the burden of proof must be alleviated in equality cases where it may be difficult for an employee to prove their case. The relevant section provides:

“85A.—(1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to a complainant.

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director under section 85(1), facts are established by or on behalf of the Authority from which it may be presumed that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.

(4) In this section ‘discrimination’ includes-

(a) indirect discrimination,

(b) victimisation,

(c) harassment or sexual harassment

(d) the inclusion in a collective agreement to which section 9 applies of a provision which, by virtue of that section, is null and void.”

⁸. Section 2 of the 1998 Act.

⁹. Section 85A of the 1998 Act.

¹⁰. Conclusions 2004, Romania, p. 495, Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276.

18. It is submitted that the legislative framework in Ireland provides for adequate application of Articles 1, 4, 4§3, 20 and E of the Charter.

(C) Complaints Mechanism- The Workplace Relations Commission

19. The Respondent provides for a robust complaints mechanism via the Workplace Relations Commission. This system provides a wide range of effective remedies in cases relating to gender discrimination in employment.

20. The Workplace Relations Commission (“the WRC”) was established under the Workplace Relations Act 2015 (**Appendix 4**) and is a body which provides for the resolution, mediation and adjudication of disputes and complaints relating to contraventions of, or entitlements under, certain enactments governing the employment relationship between employers and employees. The functions of the Commission include promoting and encouraging compliance with employment legislation, providing information to employees, employers and trade unions, conducting research and advising the Government.¹¹

21. Complaints relating to gender discrimination in pay, access to employment, training or promotion are made to the Commission via the Commission website¹². The Director General may, if he/she considers the matter to be suitable for resolution by means of mediation, refer such complaint to a Mediation Officer. Otherwise, he/she will refer the matter to an Adjudication Officer for adjudication.

22. Adjudication hearings are held in a manner that is less formal than a Court. The adjudication officer can ask questions of each party and of any witnesses attending. He or she will give each party the opportunity to give evidence, to call witnesses, to question the other party and any witnesses, to respond and to address legal points. Witnesses may be allowed to remain or may be asked to come in only for their own evidence. The adjudication officer will decide what is appropriate, taking into account fair procedures, arrangements which will best support the effective and accurate giving of evidence and the orderly conduct of the hearing.

¹¹. Section 11 of the Workplace Relations Act 2015.

¹². www.workplacelrelations.ie

23. The person who is making the complaint may be accompanied and represented at the hearing by:
- a) A trade union official
 - b) an official of a body that, in the opinion of the Adjudication Officer, represents the interests of employers,
 - c) A practising barrister or practising solicitor
 - d) In the case of a complainant who is aged under 18, a parent or guardian (as well as one of the people already listed)
 - e) Any other person with the permission of the adjudication officer
24. The adjudication officer makes a decision in accordance with the relevant law and the decision is given to the parties in writing. Either party may appeal the decision in writing to the Labour Court within 42 days of the date of the decision (decisions under the Equal Status Act must be appealed to the Circuit Court within 42 days of the date of the decision). If no appeal is lodged after this period, the decision is legally binding and may be enforced through the District Court.
25. The employer has 56 days in which to carry out the decision of the adjudication officer. If the employer fails to do so, the employee, the WRC, the employee's trade union or excepted body (an excepted body is a body that represents the interests of a particular group of workers) may apply to the District Court for an order directing the employer to do so.
26. The Commission employs inspectors who have the power to carry out inspections in relation to employment legislation. Inspectors may enter premises at reasonable times, interview employers and employees, take statements, examine and take copies of records and initiate legal proceedings. If necessary, inspectors may be accompanied by other inspectors or the Gardaí. They may apply to the District Court for search warrants.
27. Inspections are either carried out to investigate a specific complaint, or else a team of inspectors may carry out random or targeted inspections in a particular sector of

employment. Where an initial inspection of records finds that there have been breaches of employment law, the Inspection Services may:

- a) Issue a letter asking the employer to correct this, or
- b) Refer the matter to legal services for prosecution, or
- c) Carry out a further inspection

28. An inspector may serve a compliance notice on an employer if satisfied that a contravention of the relevant legislation has occurred. This notice specifies how that contravention is to be rectified. An employer may appeal against the compliance notice to the Labour Court within 42 days. There is a further appeal from the decision of the Labour Court to the Circuit Court. It is an offence for an employer to fail to comply with a compliance notice.

29. The Complainant alleges that there has been a reduction in the number of labour inspectors and funding to the labour inspectorate due to budget restrictions in Ireland¹³. From this, the Complainant draws the conclusion that “labour inspectors tend increasingly not to investigate issues of equal pay and not to file reports of offences liable to result in criminal proceedings or a civil action. This therefore is a political choice.” This allegation is denied, and the Respondent submits that the WRC inspectors play a vital role in preventing breaches of employment legislation in Ireland and have adequate resources to do so, as outlined above. The document referred to by the Complainant as the source of the above allegation regarding inspectors relates to the Irish Health and Safety Authority. This body carry out inspections to enforce standards of health and safety in workplaces, and to reduce occupational accidents¹⁴. This body has no role in the implementation of gender pay equality and is irrelevant to the issues of this complaint.

(D) Judicial Safeguards- Gender Discrimination Claims in the Circuit Court

30. Complaints relating to gender discrimination may be made to the Circuit Court rather than the Workplace Relations Commission, at the option of the employee. This provides a

¹³. Complaint No. 132/2016, page 17.

¹⁴. “Documents on the merits”, document 42.

judicial safeguard and ensures that the employee can have their complaint dealt with in a public court of law.

(E) Remedies available/Adequate Compensation

31. Section 82 of the Employment Equality Acts sets out the redress that can be awarded by the Workplace Relations Commission or Circuit Court:

“(a) an order for compensation in the form of arrears of remuneration (attributable to a failure to provide equal remuneration) in respect of so much of the period of employment as begins not more than 3 years before the date of the referral under section 77(1) which led to the decision;

(b) an order for equal remuneration from the date referred to in paragraph (a);

(c) an order for compensation for the effects of acts of discrimination or victimisation which occurred not earlier than 6 years before the date of the referral of the case under section 77;

(d) an order for equal treatment in whatever respect is relevant to the case;

(e) an order that a person or persons specified in the order take a course of action which is so specified;

(f) an order for re-instatement or re-engagement, with or without an order for compensation.”

32. There is no limit on compensation that can be awarded by the Circuit Court in a gender discrimination case.¹⁵ This allows the Circuit Court to go beyond its usual jurisdiction limit of €65,000.

33. It is submitted that the complaints procedure and remedies available provide adequate protections to ensure that men and women receive equal pay for equal work and are in compliance with Articles 1, 4, 4§3, 20 and E of the Charter.

¹⁵ Section 82(3) of the 1998 Act.

(F) Monitoring Bodies/Promotion of Equality Policies

34. The Irish Human Rights and Equality Commission is a body set up to seek to implement and monitor the requirements of equality and human rights law, including gender equality laws.
35. It carries out the following duties, among others:
- a) Providing information to the public in relation to human rights and equality generally
 - (b) Keeping under review the adequacy and effectiveness of law and practice in the State relating to human rights and equality
 - (c) Making recommendations to Government on measures to strengthen, protect and uphold human rights and equality in the State
 - (d) Examining any legislative proposal and report its views on any implications for human rights or equality
 - (e) Providing legal assistance to people taking legal proceeding to vindicate their rights (this is subject to certain conditions)
 - (f) Taking legal proceedings to vindicate human rights in the State
 - (g) Consulting with relevant national and international bodies around human rights or equality issues
 - (h) Providing or assisting in the provision of education and training on human rights and equality issues
 - (i) Carrying out equality reviews and preparing equality action plans
 - (j) Conducting inquiries into possible violation of human rights or equality of treatment obligations in the State.

(G) Position of Women on Boards

36. In its Programme for Government in 2011, the Government committed to taking steps to ensure that all State boards have at least 40% of each gender. To this end, various pieces of legislation setting up State boards and committees in recent years have contained provisions requiring appointments to have either a set minimum number of male and female members, or to have, as far as reasonably practicable an equitable balance between women and men.

37. The Electoral (Amendment) (Political Funding) Act 2012 (**Appendix 5**) provides that in order to obtain State funding in the next parliamentary term for a political party the said party must have at least 30 % women as candidates in the general parliamentary election. This quota will increase to 40% in 2023.

(H) Current Policies

38. The current *Programme for a Partnership Government* includes a commitment to take measures to reduce the gender pay gap.¹⁶

National Strategy for Women and Girls: 2017-2020

39. The *National Strategy for Women and Girls: 2017-2020*¹⁷ includes a number of measure that will continue to improve socio-economic equality for girls and women in Ireland, and in particular reduce the gender pay gap. This is a multi-departmental project and also includes the Irish Business Employers Confederation and the Irish Congress of Trade Unions.

40. Measures to reduce the gender pay gap are set out at page 35 of the Strategy and include:

- Initiating dialogue between union and employer stakeholders to address the gender pay gap.
- Developing and promoting practical information resources to explain and increase understanding of the multifaceted aspects of the gender pay gap and its causes (i.e. traditional role models, gender-segregated education and labour market, the challenges of balancing work and family life, the difference in participation of men and women in family responsibilities, the availability of quality, affordable childcare facilities and out-of-school hours care, and processes within organisations where imbalance needs to be addressed).

¹⁶. *Programme for a Partnership Government* at page 105, accessible at http://www.merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme_for_Partnership_Government.pdf.

¹⁷. National Strategy for Women and Girls 2017-2020; Creating a better society for all, accessible at http://www.justice.ie/en/JELR/National_Strategy_for_Women_and_Girls_2017_-_2020.pdf/Files/National_Strategy_for_Women_and_Girls_2017_-_2020.pdf

- Developing practical tools to assist employers to calculate the gender pay gap within their organisations and to consider its aspects and causes, mindful of obligations regarding privacy and data protection.
- Promoting wage transparency by requiring companies of 50 or more employees to complete a wage survey periodically and report the results.

41. This document contains a range of other measures that will increase the amount of women in leadership, particularly in the public service, higher education, sports and politics. It sets specific goals that are time measured, with actions assigned to particular bodies, and review dates set ahead of time.

42. The effectiveness of measures taken by the Respondent has previously been outlined to the Committee through the reporting procedure in December 2015.¹⁸ The Committee found that the situation in Ireland was in conformity with the Article 20 of the Charter.¹⁹ The Respondent resubmits this report in response to this complaint (**Appendix 6**).

Public Consultation on the Gender Pay Gap

43. The Minister for Justice and Equality, Charles Flanagan TD and the Minister of State with special responsibility for Equality, Immigration and Integration, David Stanton TD, launched a public consultation on tackling the gender pay gap on 9 August 2017. In the consultation paper (**Appendix 7**), interested parties are invited to give their views on the factors creating the gender pay gap, the actions that need to be taken; and whether they can contribute to implementing those actions.²⁰

¹⁸. Report submitted by Respondent to the Committee on application of Article 20, December 2015.

¹⁹. Conclusions 2016 - Ireland- Article 20.

²⁰. Consultation Paper on the Gender Pay Gap, accessible at <http://www.genderequality.ie/en/GE/GPG%20Public%20Consultation%20Paper.pdf/Files/GPG%20Public%20Consultation%20Paper.pdf>.

Conclusion

44. It is clear from this submission that the Respondent has implemented effective legislative provisions to implement Articles 1, 4, 4§3, 20 and E of the Charter. In addition, the Respondent has put in place an effective complaints procedure, with judicial safeguards, which ensures that individuals have access to appropriate remedies and adequate compensation. The Workplace Relations Commission and Irish Human Rights and Equality Commission act as monitoring bodies and play a role in promoting and encouraging compliance with equality legislation. The Respondent Government continue to pursue a range of policies designed to consistently move towards eliminating the gender pay gap.

45. In light of the foregoing, it is submitted that the situation in Ireland is in compliance with Articles 1, 4, 4§3, 20 and E of the Charter. Even without having regard to the effective legislative provisions in place it is open to the Committee to dismiss the complaint on the basis that it is lacking in substance given its generalised nature and given the fact that the Committee has, in 2016 and 2014 found the Respondent is in conformity with Article 20 and Article 4(3) which are the primary articles in respect of which a breach is alleged.

Costs

46. Finally, it is noted that the Complainant has asked the European Committee of Social Rights *"...to order Ireland to pay €10,000 excluding tax to Ms Anne Nègre to cover the time she has spent and the costs she has incurred in connection with these proceedings on behalf of UWE..."* Neither the Charter nor the Additional Protocol to the Charter providing for a system of collective complaints provides any basis for such a claim, thus, the European Committee of Social Rights has no jurisdiction to give such a direction on the payment of costs.