



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

31 October 2017

Case Document No. 2

University Women of Europe (UWE) v. Portugal
Complaint No. 136/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 16 October 2017



GABINETE DE ESTRATEGIA E PLANEAMENTO

University Women of Europe (UWE) v. Portugal
Complaint no. 136/2016

Portugal's submissions on the merits of the complaint

I. Introduction

University Women of Europe (UWE) lodged a complaint registered on 24 August 2016 under number 136/2016, requesting the Committee to find that the situation in Portugal is not in conformity with Articles 1, 4, 4§3 and 20 of the Revised European Social Charter (the Charter), read alone or in conjunction with Article E, as well as the Additional Protocol of 1988.

The issue of inequality between men and women has been a concern for all Contracting Parties, and Portugal is no exception. It is a fundamental task of the States to promote equality between women and men. Non-discrimination based on gender or sexual orientation is a fundamental principle of the Constitution of the Portuguese Republic and integral to the democratic rule of law.

The V National Plan for Gender Equality, Citizenship and Non-discrimination (2014 -2017), published by the Council of Ministers Resolution no. 103/2013, of December 31, is the instrument for the implementation of public policies aimed at the promotion of gender equality and the fight against discrimination on the basis of gender and sexual orientation. It succeeds the IV National Plan for Gender Equality, Citizenship and Non-discrimination (2011-2013), published by the Council of Ministers Resolution no. 5/2011, of January 1, which corresponds to a phase of the development of national policy in the field of gender equality, in compliance with the commitments made at national level, notably in the Program of the XIX Constitutional Government and in the Options of the Plan (2011-2014).

The IV National Plan was subject to external and independent evaluation, and the recommendations have been duly taken into account in the elaboration of the V National Plan. Particularly related to the gender equality issue, the Strategic Area 3 - Economic Independence, Labour Market and Organization of Professional, Family and Personal Life has the following strategic objectives to be achieved by 2017:

- Reduce persistent inequalities among women and men in the labour market, namely the wage gap;



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- Promote female entrepreneurship, as an element of mobilization of women for economic life, and disseminate good practices;
- Encourage the implementation of equality plans in private enterprises and monitor compliance during the implementation of these plans in the state business sector;
- Strengthen the mechanisms that provide women's access to places of economic decision-making.

This strategic area seeks to promote conditions favourable to equal opportunities and treatment in the labour market, through the reconciliation of the professional sphere and family and personal life, as well as the promotion of female entrepreneurship.

This proves that Portugal is undertaking regular reviews of the impact of the strategies adopted and establishing a realistic timetable. Portugal also pays close attention to the impact of the policies adopted, as recommended by the Committee.

The Portuguese Labour Code, published by Law no. 7/2009 of February 12, also contains a set of general legal provisions about equality and non-discrimination in articles 23 to 28, and particularly regarding discrimination based on gender in articles 30 to 32, prohibiting discrimination in access to employment and pay gaps. Articles 33 to 65 of the Portuguese Labour Code protect women in the event of maternity and promote the sharing of responsibilities by granting leave to the father as well.

II. The alleged violations of the Charter

UWE alleges that the situation in Portugal constitutes a violation of Articles 14, 4§3, 20 and E of the Charter, as well as of the 1961 Charter and Article 1 of the 1988 Additional Protocol. UWE invokes two main grounds:

- a) The first ground concerns the wage gap between men and women in Portugal which still persists and is unfavourable to women. 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 Labour Equality Commission and the labour inspectorate.
- b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, the percentage of women being 6% in the administration boards of publicly listed enterprises.



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However, the UWE does not refer to specific cases, basing its conclusions on the statistics. We believe that a State cannot be condemned solely on the basis of statistics, because we would be dealing equally with States that are making efforts and putting equality on the agenda and States that have done nothing to reduce inequality, just because both present a gender pay gap. It would be extremely penalizing and demoralizing to those, like Portugal, who have been making efforts and taken steps to eliminate the wage gap and promote equality between men and women.

Moreover, the UWE fictional background is intended to shock and raise awareness but does not correspond to the Portuguese reality, it is based on studies that were not addressed to Portugal.

In 2011, date of the last censuses, of the resident population in Portugal, 5 046 600 were men and 5 515 578 were women. For every 100 women there was a ratio of 91.5 men¹, and we cannot speak of masculinization of the births because in Portugal this is not true.

Also the portrait of the teenage girl being discouraged to study sciences is completely not in line with the Portuguese reality. In 2017 were enrolled in higher education 194 024 women and 167 919 men².

Regarding the protection of maternity, as referred above, the Portuguese Labour Code contains a set of legal provisions, namely a special protection in the event of dismissal of a pregnant worker, a puerperal or breastfeeding woman or a worker on parental leave.

We support the idea of parity in Europe, where a quota of 50% is the only acceptable outcome, but we have to be realistic and accept that this is not achieved overnight and that there is no measure that is 100% effective at eliminating inequality.

We therefore call on the Committee's wisdom to take into consideration the efforts being made and the measures which have not yet had sufficient time to fully achieve their effects.

III. Measures adopted by Portugal in the recent years

a) Concerning the 1st ground - Equal pay for work of equal value

¹ Source: PORDATA

<https://www.pordata.pt/Portugal/Rela%3 %a7%c3 %a3 o+de+masculinidade++segundo+os+Censos+total+e+por+grupo+et%c3 %alrio+++2754>

² Source: PORDATA

<https://www.pordata.pt/Portugal/Alunos+matriculados+no+ensino+superior+total+e+por+sexo - 1048>



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Since April 2011 the Commission for Equality in Labour and Employment (CITE) has been assessing the legality of collective bargaining provisions with regard to their compliance with equality between women and men in labour law requirements – Article 479 of the Labour Code; article 9 of the Decree-Law no. 76/2012, of March 26; Law no. 23/2012, of June 25.

CITE receives complaints regarding violations of legal provisions on equality and non-discrimination between women and men, related to the protection of parenthood, equality and non-discrimination and work-life balance.

CITE also issues legal opinions, which employers are obliged to request in certain situations.³

More than 90% of the legal opinions issued, as well as the complaints received by CITE, are from women.

Between 2006 and 2009 the project "Revalue work to promote gender equality", promoted by a Trade Union Confederation in a partnership with several organisations, including the ILO office in Lisbon and CITE, was developed.

This was an experimental project aimed to develop and test a job evaluation method free from gender bias, centred on the value of work, allowing the application of the principle "equal pay for equal work or work of equal value", and could be applied to various activity sectors.

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This method measures how jobs which are predominantly female and predominantly male jobs but of equal value are paid equally. It is therefore an effective method to identify and eliminate the influence of prejudices and stereotypes when determining the remuneration of men and women, thereby improving the situation of low-wage earners, mostly women.

This methodology is designed to support organisations that want to implement a process to evaluate jobs with no gender bias, in order to revalue the work in enterprises and contribute to the objectivity of the HR management process and work organisation in order to promote equal pay for men and women.

During the project this methodology was tested in several companies (mainly SME) of the food and beverage sector. As a result of this process some companies realised that some occupational categories were gender segregated and that the occupations mainly performed by women were less valued than the ones performed by men; they also realised that there

³ <http://cite.gov.pt/en/ourmission.html>



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were a number of female occupations where the working conditions were much worse than the working conditions of male dominated occupations. These findings allowed the companies to improve the working conditions, to review some occupational categories and in one company some women moved to occupations that were typically seen as men's occupation.

After the end of the project the job evaluation method developed within its frame was applied in 3 economic sectors (textile industry, footwear industry and woollen industry). The result of this work of job evaluation in these sectors was the identification of the occupational categories in each sector which are gender segregated and where also the pay gap is gendered. This diagnosis allowed the trade unions and the employers' associations of each sector to start a collective bargaining process in order to review some of the most gender segregated occupations and include this in the collective labour regulation instruments.

The Council of Ministers Resolution no. 13/2013, published on March 8, approved a set of measures aimed at guaranteeing and promoting equal opportunities between men and women in the labour market, among which, the elaboration of a report on wage differentials in the various economic activities.

In 2013 a working group formed by CITE, CIG, the Cabinet of the Secretary of State of Employment and the Cabinet of the Secretary of State of Parliamentary Affairs and Equality, drafted the first **Report on Wage Differences by Economic Activity**⁴ with a view to undertake a survey on wage differentials in the various economic activities. In 2014, this report was presented and discussed in the Standing Committee for Social Dialogue, which led to the drafting of recommendations proposed by the Government with the aim of eliminating the wage differences that have no objective justification.

In 2014 CITE developed two web **tools**⁵ that enable companies to analyse their personnel and pay structure and understand whether the pay differences found are gender-based or not.

The *Self-Assessment Survey on Equal Pay Between Men and Women in Companies* is a tool built in order to evaluate some organisational practices related to the valuation of work and the payment of salaries and other benefits to workers.

⁴ http://cite.gov.pt/pt/acite/disparidadessalariais_06.html

⁵ <http://calculadora.cite.pt/index.php/welcome/home>



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When going through the various questions that make up this questionnaire the employer is induced to reflect on some practices or procedures as a way to identify situations that may be a potential cause of unequal treatment between men and women, with effects on their wage level.

The *Gender Pay Gap Calculator (Calculator DSG)* is a software tool that allows companies to conduct a self-assessment exercise on equal pay between men and women. It allows the measuring of the gender pay gap within the companies and the identification of concrete situations of pay gap between women and men, and the assessment of whether these differences are explained by objective factors or by the variable gender, or not.

The methodology used in building the calculator DSG is based on a statistical regression analysis that considers a number of variables related to the skills required for a job and the evaluation factors of the workers' jobs, in order to assess their influence on the basic wage and on earnings. The "gender" arises as a further independent variable, since all other variables relate to it.

Apart from this analysis companies still get a set of statistical information on the salary and earnings gaps among men and women in all variables considered.

In the framework of the cooperation between CITE and the Labour Conditions Authority (WCA), and in order to develop joint actions to raise awareness among employers, as well as to achieve a more fluid articulation between the CITE's legal work and the WCA's inspection activity, the two entities, in a joint initiative, promoted the **National Action to Promote Gender Equality at Work**⁶, with the objective of raising awareness about the importance of promoting gender equality and decent work, based on four thematic axes: equal pay, harassment, protection in parenthood/work-life balance and access to work, employment and vocational training.

The Action was launched on September 20, 2016, with the participation of 124 individuals. It had a duration of one year (September 2016 to September 2017) and was aimed at increasing public and social awareness of the phenomenon of gender discrimination in the labour market, making social partners, representatives of workers and society at large accountable in the fight against gender discrimination in the labour market, and contributing to make it clear that gender discriminatory behaviour in the labour market is reprehensible and not tolerable.

⁶ <http://cite.gov.pt/pt/acite/campanhas006.html>



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Information materials were developed in order to disseminate the main contents of the Action in particular advertisements published in nationwide media about harassment, wage equality, working hours, conciliation of professional and personal life and parenting.

From 2013, CITE celebrates the National Equal Pay Day every year, so as to raise public awareness in order to reverse the persistent difference between what women and men earn, disseminating information on inequalities among the main agents within the labour market, enterprises and employers' associations of the major economic sectors as well as the social partners.

Despite all these actions and measures to raise awareness and to facilitate the complaint procedure, from January 1, 2010, to June 30, 2017 CITE only received **9 complaints related to the gender pay gap**.

LEGISLATION

There were three main initiatives regarding equal pay:

Resolution of the Council of Ministers no. 13/2013, March 8, which provides a set of measures to ensure and promote equal opportunities and outcomes between women and men in the labour market, in particular the elimination of the pay gap, including the drawing up of a report on wage differences by economic activity, as referred above.

Resolution of the Council of Ministers no. 18/2014, March 7, which provides a set of specific measures to combat gender pay gap in order to achieve effective gender equality.

This Resolution determines that:

- a) the companies of the State-owned sector have to prepare, every three years, a report on the salaries paid to women and men aimed at identifying and preventing unjustified differences in remunerations. This report has to be disseminated and made available on the companies' website;
- b) as a result of this report, the companies have to establish concrete measures, to be included in their plans for equality, that respond to situations of wage inequality between women and men.

The Resolution also recommends that private companies with more than 25 employees draw up a quantitative and qualitative analysis of the gender pay gap and develop a strategy for correcting any unjustified differences in pay.



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Resolution of the Council of Ministers n.11-A/2015, March 6, which establishes mechanisms to promote equal pay.

Contrary to what the UWE has claimed Portuguese laws are not out-dated, some of the existing laws are constantly updated and others are very recent and have not yet produced their effects.

- b) Concerning the 2nd ground - Representation of women in decision-making posts in private companies

On June 30, 2015, CITE released the National Promotion Campaign Women on the Boards of Directors, at the Portuguese Communications Foundation, in Lisbon⁷.

In 2015, in Portugal, 59% of higher education graduates and 54.8% of those with a PhD were women. However, 91% of the seats of members of the Board of Directors of the 17 listed companies were occupied by men. In the absence of an objective reason for this disparity, the campaign was intended to raise awareness among stakeholders, seeking to change this trend. With this national impact campaign, it was hoped that the message would be carried to a large number of companies, social partners, workers, through several strategies, various formats and tools, in the big media TV and on radio, on the Internet, external media, such as Muppis and public transport, as well as awareness-raising actions.

According to the latest data provided by the European Institute for Gender Equality, relating to 2017, the presence of women on the boards of Directors of the largest companies listed on the stock exchange, in Portugal, is 15.5% and of men is 84.5%. In the UE28 the average is 24.6% for women and 75.4% for men⁸.

Comparing with the data provided by the same Institute for the year 2014, in which the presence of women in the same positions was of 9.5% and 90.5% of men in Portugal compared to the average in UE28 in which the presence of women was, in the same year, of 20.2% and that of men was 79.8%, there is a positive development that, however, deserves continued attention.

⁷ http://cite.gov.pt/pt/acite/campanhasOO_1.html

⁸ http://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm/bar/year:2017-B_1/geo:EU28.PT/EGROUP:COMP/sex:M,W/UNIT:PC/POSITION:MEMB_BRD/NACE.TOT



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With regard to political life, Organic Law No. 3/2006⁹, of August 21, stipulates that the lists of candidates for the national Parliament, the European Parliament and the municipalities should promote equality between men and women.

LEGISLATION

Recently, there were two main initiatives regarding parity:

Law no. 62/2017¹⁰, of August 1, which establishes the Regime of the balanced representation between women and men in the administrative and supervisory bodies of the entities of the public sector and listed companies.

The new law establishes that from 2018 onwards it will be mandatory to fulfil a minimum share of the less represented sex on the boards of directors and supervisory bodies of the state-owned companies and listed companies. Thus, in the state-owned companies, at least 33.3% of the positions on the boards of directors and supervisory bodies have to be filled by women. For listed companies, the minimum is 20% in 2018 and will rise to 33.3% in January 2020.

Resolution of the Council of Ministers no. 11-A/2015, of March 6, which promotes a more balanced representation of women and men in decision-making bodies of publicly listed companies.

Once again, these initiatives are very recent and have not yet accomplished their objectives .

c) Awareness raising actions

In order to encourage employers to achieve gender equality, CITE has been promoting since 2000, and in partnership with the Commission for Citizenship and Gender Equality (CIG) since 2009, the Equality is Quality Award {PIQ}¹¹ that distinguishes companies and other employers with policies in the area of gender equality, work-life balance and good practices for preventing and combating domestic violence and gender based violence .

This award is in line with the V National Plan for Gender Equality, Citizenship and Non-discrimination (2014-2017) and the V National Plan to Prevent and Combat Domestic and Gender-Based Violence (2014-2017).

⁹ Amended by Organic Law No. 1/2017, of May 2.

¹⁰ http://cite.gov.pt/asstscite/downloads/legislacao/Lei_62_2017.pdf

¹¹ <http://cite.gov.pt/pt/premioigualdade/index.html>



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Since the 5th edition 242 organisations applied for this award, 18 received it and 36 received an "honourable mention".

The 12th edition of PIQ was opened for proposals between September and December 2016 and the applications are still under evaluation.

Without prejudice to public policy measures, the difficulties and discrimination women face in the labour market will only be effectively combated with the active participation of employers, namely companies.

Since 2013, CITE has sponsored a working partnership with private sector organisations and state-owned enterprises, to implement, monitor and disseminate concrete actions on gender equality, including reconciliation of work-family and personal life, recruitment, horizontal and vertical desegregation and to combat wage inequality.

This partnership has resulted in Project **IGEN – Forum of Companies for Gender Equality** that brings together companies committed to promoting measures for gender equality and to combatting all forms of gender based discrimination in the workplace.

This Forum had the participation of 60 companies that pledged to undertake actions to promote gender equality in their organisations (including parental rights, measures to support maternity, paternity, work-family reconciliation, decision-making and pay gap) and established quantified targets for improvement.

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The Forum has a governance model, coordinated by a task force that ensures the work methodology, the definition of objectives, the strategy and the activities to be promoted. It has four working groups: Communication and Image; Gender Equality Measures; Plenary Meetings; and Publications, and it meets quarterly, with a pre-established agenda in order to make decisions, discuss proposals presented by any member, approve documents and activities and share good practices. In such meetings practices from two or three companies are presented and discussed.

Throughout this process, companies share their experiences, difficulties, strategies to overcome obstacles and the main achievements. They work as a community of knowledge and practice and an online platform was created to share information.

Between 2014 and 2017, the weight of the initiatives developed by the organizations that make up the Forum, within the "Remuneration and Management of Careers" typology ranged from 8% in 2014 to 12% in 2017.



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In order to raise awareness about the persistence of the gender pay gap and put the issue on the political agenda of the social partners, the media and the general public, CITE launched, in the last years, some national campaigns on equality between women and men, such as:

- Campaign for the National Promotion of Women on Boards of Companies (July 2015);
- National Campaign for the Promotion of Work-Life Balance: "Time to have Time" (October 2013);
- National day on Gender Pay Gap (March 2012; March 2013).

Every year CITE celebrates the gender pay gap national day by releasing data and information about the subject on its website and the media.

In June 2017 CITE initiated a training cycle called "Equality Workshops" aiming at analysing gender gaps in labour market indicators, combating labour segregation and discrimination and promoting gender equality by deconstructing gender stereotypes and preconceived ideas. This training is organised in four sessions covering the following subjects: the situation of women and men in the labour market; gender concepts and principles; strategies and tools for equality; elaboration of participants' action plans.

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The first round of the training cycle involved 23 trainees from central and local public administration, managers and officers from NGOs, trade unions and companies. A new round of the training cycle will reopen in autumn 2017.

d) Labour Inspection Activity

In the last years the Working Conditions Authority has been developing a specific program to promote gender equality and the dignity of working conditions in order to identify, eliminate and/or reduce discrimination in hiring, remuneration systems, vocational training and performance assessments, enhance the gender dimension in inspection activities, and implement inspection activity support instruments which make it possible to indicate situations of discrimination and noncompliance with labour legislation in the field of gender equality in all activity sectors.

It involved workers and their representatives, employers and their representatives, service providers, social and institutional partners.

The table below shows the general data resulting from labour inspection activity:

Table 1- Number of labour inspectors, visited establishments, workers covered
2011/2016



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Ano	Number of Labour Inspectors	Visited Establishments	Workers		
			Men	Women	Minors
2011	371	80.159	360.709	248.634	93
2012	359	37.398	285.510		13
2013	343	29.539	200.138		15
2014	308	27.738	170.060	138.895	35
2015	307	25.447	133.315	101.328	62
2016	314	25.339	168.747	118.604	190

Source: Working Conditions Authority Report

An inclusive labour market, addressing gender equality as a matter of citizenship, reconciling family, personal and professional life, respecting the differences and universality of the guarantees associated with the employment contract, as well as protection of vulnerable groups of workers, justified specific visits on this subject of discrimination as defined in the annual plan of activities of WCA. Any person can also present a request for intervention and complaints can be made on the WCA website.

WCA in collaboration with CITE, provided in 2014 specific training on gender equality and non-discrimination to 160 inspectors in order to combat gender discrimination in the workplace. The number of interventions and proceedings on discrimination has increased as illustrated by the following table.

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Table 2 - No. of visits on discrimination
2011/2016

Years	Visits
2011	684
2012	149
2013	112
2014	309
2015	256
2016	518

Source: Working Conditions Authority Report



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Table 3 - Number of warnings 2011/2016

Subjects	Warnings					
	2011	2012	2013	2014	2015	2016
Non-discrimination	265	127	13	82	261	140
Parenting	4	25	3	2	8	14

Source: Working Conditions Authority Report

Table 4- Number of infractions - 2011/2016

Subjects	Infractions					Minimum fines (€)					
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015	2016
Non-discrimination	11	8	81	19	111	1665	161.615	157	2E135	911B7	
	11	8	81	19	112	1665	161.615	213B	u.m	1S811	11D51

Source: Working Conditions Authority Report

Specific information concerning the decisions of labour equality between men and women in compliance with the Resolution of the Assembly of the Republic no. 41/2013¹² is available on the WCA website.

Providing information and ensuring control in the context of equality and non-discrimination in employment and work aims at guaranteeing protection associated with parenting, the prevention of discrimination in employment and work on the basis of gender and the guarantee of equal pay for men and women for work of an identical nature, quality and quantity.

In the WCA website there are information materials in order to minimize difficulties in applying the law and to correctly inform the employers and employees about their duties and rights. There is also specific legislation on gender equality, a list of psychosocial risks, harassment, stress, violence, complaints forms and FAQ.

¹² [http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx)



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The Information guide on preventing and combating harassment in the workplace: an instrument to support self-regulation - is a support tool that aims, in a simple way, to help identify situations of harassment and to serve as inspiration for the construction of procedures to prevent and combat such phenomena in the workplace.

The National Strategy for Safety and Health at Work 2015-2020 has a specific measure in order to develop preventive actions directed to specific audiences namely women, young people and people with more than 55 years.

WCA has, in all its 32 regional services, face-to-face and a national telephone information service, where the workers, the employers and their representative bodies can obtain information and advice in the areas that constitute its mission, namely non-discrimination.

Table 5 - Information actions 2012/2016

Years	Informations					Total
	Presence	Telephone	Other	No.	Persons	
2012	222.506	36.399	157.089			415.994
2013	218.445	45.866	2.904	1.417	109.868	377.083
2014	226.610	131.819	12.875	1.609	57.729	429.033
2015	164.914	211.758	10.303	2.392	92.217	479.192
2016	208.112	174.769	11.082	1.880	173.866	567.829

Source: Working Conditions Authority Report

Specifically in 2015 the WCA developed:

- 79 actions to raise awareness about promoting equality and non-discrimination in access to employment and work.
- 121 dissemination actions named "Back to School Campaign" (the issue of equality was one of the themes addressed in a transversal perspective of gender equality).

IV. Conclusion

In spite of the economic crisis, Portugal has been adopting legal, financial and operational measures to ensure steady progress towards achieving the goals laid down by the Charter.

Given the stated measures we cannot agree with the allegation that the equality monitoring bodies have failed to fulfil their task in fighting discrimination.



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Although the gender pay gap still exists, as evidenced by the statistics, Portugal is making efforts to eliminate that gap. Therefore, the above mentioned measures and initiatives should be considered by the Committee. We do not agree that this would validate the argument that it is reasonable to be subjected to unequal treatment with regard to pay, but it would recognize the efforts of the Parties that have gender equality on their agendas instead.

In addition, the complaint does not provide evidence of violation of Articles 1, 4§1, 4§2, 4§4, 4§5 and 20 (a) and (b) of the Charter.

For this reasons, we consider the UWE's allegations unfounded.