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

28 May 2018

Case Document No. 9

University Women of Europe (UWE) v. Cyprus
Complaint No. 127/2016

**FURTHER RESPONSE FROM THE GOVERNMENT ON THE
MERITS**

Registered at the Secretariat on 13 April 2018

FURTHER RESPONSE OF THE REPUBLIC OF CYPRUS
ON THE MERITS OF THE COMPLAINT
MINISTRY OF LABOUR, WELFARE AND SOCIAL INSURANCE

University Women of Europe (UWE) v. Cyprus
Collective Complaint N.127/2016

I. General remarks

This document is a further response of the Republic of Cyprus on the Collective Complaint N.127/2016 submitted by University Women of Europe (UWE) against Cyprus, regarding the implementation of Articles 1, 4 (excluding §3 and §5), 20 and E of the Social Charter, relating mainly to the equality in pay between men and women, and secondly other closely-related gender equality issues. Before presenting some further comments on specific issues raised in the Complainant's response, the Respondent wishes to reiterate its observations dated 13/10/2017 and is compelled to make some general remarks, drawing the attention of the European Committee of Social Rights to the following:

(a) The Complainant in many instances reiterates its original allegations, after having misinterpreted, unjustifiably downgraded or completely ignored the Respondent's observations, arguments and remarks, reflecting on the comments selectively and in a rather abusive manner.

(b) The Complainant insists on presenting and commenting on data that is out-dated and no longer reflects the current situation in Cyprus, neither does it take into consideration important developments made, despite the fact that the Republic of Cyprus has already presented in its response the latest (available at the time) data of 2015. i.e. the Complainant refers to the Shadow Report of the CEDAW (2013), which was based on Eurostat 2009 data (p.14).

(c) In some cases, the Complainant criticizes the way the Republic of Cyprus presented its positions, while it is also critical of the methodology, work and results of acknowledged European or International institutions, i.e. criticizing the European Committee of Social Rights' conclusions, for finding Cyprus in conformity with the Charter (p.6), or implying that Eurostat and member states failed to adopt objective measurements of income inequality (p.13).

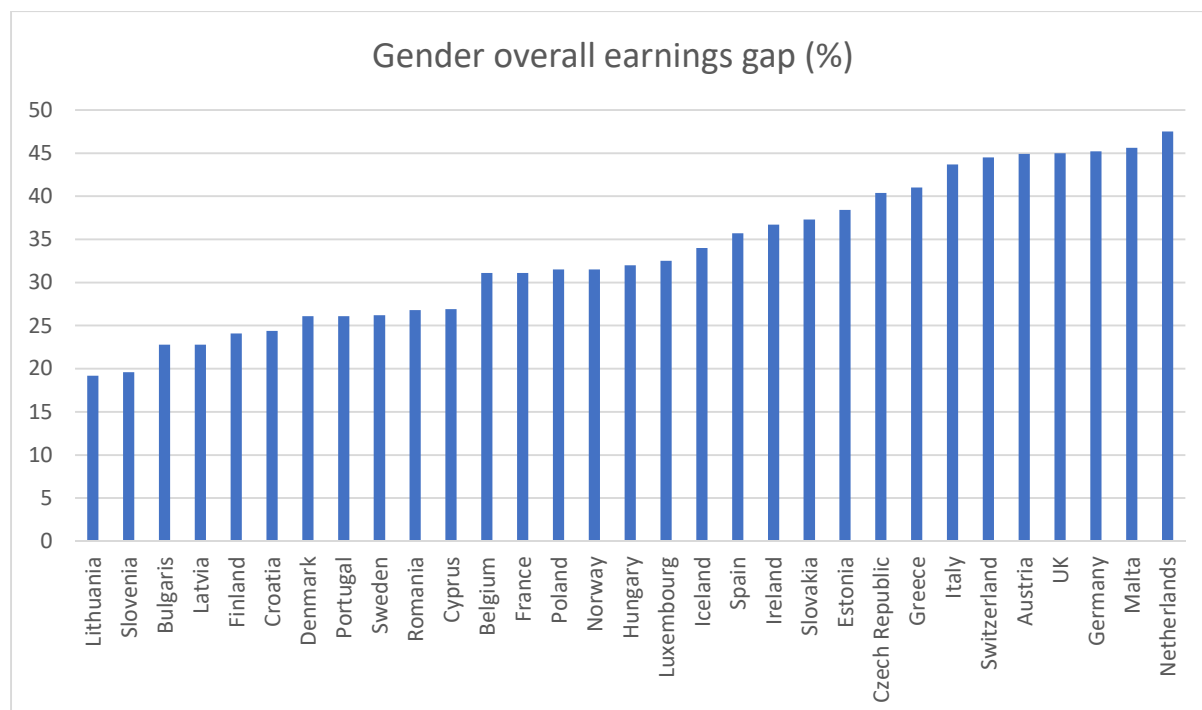
II. Further response on the merits of the complaint

- *Pay Gap statistics and measurement*

According to the latest (2016) data released from Eurostat, the gender pay gap in Cyprus has further decreased to 13.9%. The unadjusted gender pay gap has been the headline

indicator in the European Statistical System for a long time, to measure the average difference in hourly earnings between male employees and female employees. It is widely used in gender policy at the European and national level.

Having said that, the Respondent is compelled to comment on the Complainant’s references of the “gender overall earnings gap”, although not used between member states for comparison reasons, since it measures the average difference in earnings between men and women employed (working part-time or full-time) but also not employed. However, since this indicator is mentioned by the Complainant (p.15), it is worth a slightly more extensive analysis. The gender overall earnings gap in Cyprus (2014 figures) was 26.6%, which still places Cyprus amongst the best performing countries, ranking 11th as presented in the graph below.



Moreover, since the Complainant also refers to the contributions to the gender overall earnings gap (p.15), an interpretation of the figures is also necessary in order to allow for a clear conclusion, otherwise the sole presentation of numbers becomes irrelevant.

- The gender pay gap: 48.6%
- The gender hours gap: 13.5%
- The gender employment rate gap: 37.9%

In the case of Cyprus, as depicted by the Complainant, the differences of working hours between men and women contributes the least to the pay gap (13.5%), differences in the employment rate contribute more (37.9%), while the differences in pay are the major contributor. Contrary to the Complainant’s argument (p.16) that the Cyprus Government relies on the wrong indicator, ignoring “the fact that women are much more likely to be confined to part-time work”, the interpretation of figures actually proves that the pay gap in Cyprus is not mainly caused by great differences in the representation of women and men in part-time work.

- *The measures implemented do not concern small enterprises*

Although one would expect from the title of the Complainant's comment to see how the measures implemented by the Cyprus Government excluded small enterprises, it looks like the Complainant is once more referring to statistical data, and specifically to ETUC's observations (p.12) on how official statistics exclude small enterprises. It has to be noted once more, regarding data published by Eurostat, that for comparability reasons, there is a common definition for all member states, according to which, only data concerning enterprises with 10 or more employees should be taken into account. The structure and content of the indicators is obviously not on the discretion of any member state to decide at national level, so the Complainant's comment is actually irrelevant. However, since the issue was raised, the Respondent is again obliged to present the real facts in order to shed some light on the Complainant's unfounded assumption that "It is therefore most probable that the gender pay gap is even higher in these enterprises" (p.12). Against the above-mentioned comment, it is noted that in small enterprises with 1-9 employees the gender pay gap in Cyprus was actually lower (11,3%) than the gap in enterprises with 10 or more employees (14.4%)¹.

- *Work of the labour inspectorate*

Committed to the annual target of 200 inspections, the labour inspectorate has actually carried out 1440 inspections on equal pay so far. Reports are prepared for every investigation, allowing for follow up and further action if needed.

- *Measures implemented for reducing the gender pay gap*

The Complainant criticizes (p.9) that "...the crisis cannot serve as a pretext for totally or partially giving up the implementation, and the pursuit of the objectives set out in the Charter" and draws the conclusion that in this respect "...the Respondent manifestly fails to meet the specific obligations of the Social Charter". Moreover, the Complainant keeps referring to projects which are "under way" (p.14), having selectively ignored the Republic's presentation of the broad mix of measures promoted through the Project titled "Actions for Reducing the Gender Pay Gap", which was actually implemented in the midst of the economic crisis, during the period 2010-2015 and was successfully completed.

As far as on-going measures are concerned, another "Equal Pay Day" event was recently organised (17 March, 2018) contributing to raising public awareness on the gender pay gap and bringing together public authorities, social partners and working people in a collective effort to reaffirm commitment for reducing the gap and promote cooperation for further action. Moreover, the National Certification Body for Gender Equality continues its work, by granting certifications to companies which implement good practises that promote gender equality. Companies that are awarded the "Equality Employer" certification, have proved fulfilment of the pay equality principle, amongst other criteria.

¹ 2014 figures

- *The under-representation of women in decision-making posts*

Although Cyprus does not have a mechanism to foster representation of women on the boards of private companies, various mechanisms have been put in place, promoting gender equality in the public and private sphere, such as the Commissioner for Administration and Human Rights (Ombudsperson), the National Institution for the Protection of Human Rights, the Commissioner for Gender Equality, the Gender Equality Committee in Employment and Vocational Training and the Equality Inspectors of the Department of Labour/Ministry of Labour, Welfare and Social Insurance.

The introduction of gender mainstreaming in economic decision-making both in the public and private spheres is of primary importance, in order to lay the foundations for sustainable progress. In addition to this, policy measures could be adopted with specific targets to promote a work-life balance and the reconciliation of professional and private life; to encourage career development for both women and men; as well as to promote female entrepreneurship. Despite this, the contribution of the social partners and businesses in efforts to increase women's participation in economic decision-making is of critical importance.

The promotion of women in economic life has been identified as a major priority of the Cyprus National Action Plan for Equality between Women and Men 2014-2017. Measures included schemes to increase the availability of high quality low-cost child-care facilities, vocational guidance and training programmes, schemes to support women's entrepreneurship, and measures to reduce gender segregation in employment and eliminate the gender pay gap.

The Ministry of Labour, Welfare and Social Insurance also proceeded with the establishment of a "gender equality label" for those businesses that actively promote gender equality policies.

Final remarks

The Government submits that the applicants cannot recover costs and expenses which are not reasonable as to quantum, are not supported by relevant receipts, have not been necessarily incurred and are excessive taking, *inter alia*, into account that similar complaints have been lodged against 15 states. As such the applicants cannot recover 10,000 euros for costs and expenses.

For these reasons the Government respectfully requests the Committee to decide and declare that the complaint is manifestly ill-founded.

ANNEX

Response by the Commissioner for Administration and the Protection of Human Rights

Complementary answer on the observations of the University Women of Europe

The Commissioner, albeit being appointed by the President, on the recommendation of the Council of Ministers and with the prior consent of majority of the House of Representatives,² is an Independent Officer and, being so, according to the relevant legislation, he/she is not accountable neither to the Government, nor to the Parliament or to any other Public Authority or Body. He/she does not receive any instructions in the exercising of his/her powers. His/her only responsibility towards the Government is, according to the relevant Law, to inform the President of the Republic, the Council of Ministers and the Parliament about its activities, through its Annual Report. Also, a monthly memorandum, in summary form, is communicated to the Council of Ministers and the Parliament, referring to each report submitted.

We may also say that, within the last few years – since the break out of the economic crisis – discounts in rights and violations of the anti-discrimination legislation is being indeed observed. This economic crisis did not affect the status of the Commissioner and the Equality Body. The only consequence was the salary cuts of the staff of the Office, as it was implemented in the entire public service. As Commissioner and under all of her competences, we totally agree that having legal texts (constitution, legislation etc) prohibiting discrimination and promoting the equal treatment, does not mean that full implementation of these provisions is being achieved. It is probably the first – and very important – step, upon which all other actions are to be based. Further measures and actions, of course, are to be pursued, besides the examination of complaints that are submitted in our Office. For that matter, within the last few years, our Office has been active in preventing discrimination and promoting equality and respect for diversity through various actions, within the framework of the Commissioner's competence; be it provision of training to civil servants and to employment groups (e.g. on sexual harassment), to teachers, parents and students (e.g. on respect for human rights and gender equality), running of national campaigns (e.g. on the rights of pregnant women and new mothers), publications – or providing input – of relevant Codes of Conduct or Handbooks (e.g. gender mainstreaming). Of course, one must not disregard the fact that our Office has not being injected with additional members since 2009, even though three new competences have been added to its mandate ever since. Following, however, the Functional Review of our Office under Cyprus Public Administration Reform, we have asked for new positions and their approval is under process.

Nonetheless, the Commissioner's role specifically on gender discrimination is limited. For this reason, in 2017, and in the context of drafting the new Gender Equality Strategic Plan - 2018-2021 (by the

² Article 3 of the Commissioner for Administration Law (N. 3/1991)– *“For the purposes of the execution of the functions and of the conduct of the investigations provided by the Law, there shall be appointed by the President, on the recommendation of the Council of Ministers and with the prior consent of the majority of the House of Representatives, a citizen of the Republic (...), with a high level of education and experience and with the highest integrity, as Commissioner for Administration.”*

Ministry of Justice and Public Order), the Commissioner requested for the amendment of the Combating of Racial and other forms of Discrimination Law (L. 42(I)/2004), as well as of the Equal Treatment of Men and Women in Employment and Vocational Training Law (L.205(I)/2002) to be included in the activities that are to be implemented. It is important to include gender in the grounds of discrimination covered by the L. 42(I)/2004, so that the Commissioner would be able to exercise his/her competences already included in the legislation (e.g. ex officio interventions, drafting codes of conduct, raising awareness etc) and expand Commissioner's jurisdiction provided by the L.205(I)/2002.

It has to be mentioned, though, that as a member of Equinet – European Network of Equality Bodies, we contributed to the preparation of the handbook on equal pay³ (2016). Yet, we do admit that our experience on unequal pay cases is limited. However, it would be a rushed and unsubstantiated conclusion to say that, the limited number of unequal pay cases handled by the Office means that the Commissioner, as Equality Body, does not work efficiently, independently and effectively for the promotion of the equality and the non-discrimination.

Now, regarding the references to the latest country report on non-discrimination, unfortunately, some information included in are misleading or incorrect and some conclusions may be characterised as arbitrary. The Commissioner's recommendations on discrimination issues are binding, whatsoever (unlike the recommendations regarding maladministration that are non-binding – according to N. 3/1991). We are not in position to say easily the percentage of compliance and it is true that we are not often using all the available means provided by the legislation to ensure compliance (eg. fine or other sanctions). It may not have been deemed necessary either way. Nonetheless, it is true that the Commissioner uses its mediation function, which is a very unique tool that allows the Commissioner to come close to the competent bodies/ authorities and, via constructive talk, achieve compliance to his/her recommendations and opinions, without necessarily needing the submission of a Report. This mediation function was a recent amendment of the legislation N. 3/1991 and it is considered an additional tool which empowered the effectiveness of the Commissioner, as rendered the authorities accountable for non compliance.

In addition, in 2014 the Supreme Court confirmed that in case the Commissioner, as Equality Body, recommends specific measures according to the Combating of Racial and other forms of Discrimination (Commissioner) Law and the Equal Treatment of Men and Women in Employment and Vocational Training law, the Attorney General does not have the power to reject or ignore those recommendations. If the Commissioner recommends and informs the Attorney General about the amendment of a legislation, due to the fact that the application of a provision leads to a discriminatory treatment, then, the Attorney General should proceed to inform the competent authority for further actions.

In terms on numbers, since 2004, the Commissioner has investigated 481 complaints regarding gender discrimination in employment. During this period, our Office has issued 80 reports and interventions, through which recommendations were made to public authorities and private companies. The Commissioner cannot bring any claim before the Court. But, it has to be noted that, within the last few years, Court decisions on cases of sexual harassment and pregnant women dismissals were delivered in which a reference to Commissioner's reports is made.

³ http://www.equineteurope.org/IMG/pdf/handbook_on_equal_pay_-_electronic_version-2.pdf

As far as it concerns the staff, the Commissioner is not empowered to appoint its own officers. The members of the staff are public servants, who are appointed in accordance with the Public Service Law in force. Even though, in the selection procedure, Ombudsman's opinion is advisory, most of the times it is being upheld. It is not accepted that the staff of the Equality Body is not well-trained and/or inexperienced. Even though legal knowledge/ background is helpful, it is not a prerequisite for the selection of staff. Even so, 7 out of 10 officers of the Equality Body have legal background, including the three First/Senior Officers, which were and are in charge, in addition to the Commissioner, who also has legal background and has the final word. Either way, over the last years, 10 members (approx.) of the Office' staff are working (not exclusively) on discrimination issues (complaints handling, promotion and public education functions, advisory and monitoring functions) and their every action is based on relevant legal text and case law. Lastly, the average handling time (of complaints submitted in our Office) is 6 months⁴.

⁴ According to statistical data given end of 2015 to the Finnish team preparing the Functional Review of our Office under Cyprus Public Administration Reform – Strengthening the Efficiency of the Public Sector.