

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



14 November 2017

Case Document No. 5

University Women of Europe (UWE) v. Czech Republic
Complaint No. 128/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 3 November 2017



THE CZECH REPUBLIC

OBSERVATIONS OF THE GOVERNMENT
ON THE MERITS OF COLLECTIVE COMPLAINT

UNIVERSITY WOMEN OF EUROPE (UWE) v. the CZECH REPUBLIC
(no. 128/2016)

PRAGUE

3 NOVEMBER 2017

1. In its letter of 20 July 2017 the European Committee of Social Rights (“the Committee”) notified the Government of the Czech Republic (“the Government”) that on 4 July 2017, collective complaint no. 128/2016 lodged by non-governmental organisation UNIVERSITY WOMEN OF EUROPE (UWE) (“the complainant organisation”) against the Czech Republic had been declared admissible. Concurrently the Committee invited the Government to submit their observations on the merits of that collective complaint.

THE FACTS

2. The Government do not agree with the simplified picture presented by the complainant organisation as regards a very complex issue of unequal remuneration of men and women (“gender pay gap”) and the representation of women in decision-making posts in private companies. They shall straighten out the contradictions and inaccuracies contained in the collective complaint in question below, in the part of the Observations concerning the merits of the collective complaint.

THE LAW

3. The complainant organisation asserts in particular that
- despite international obligations and relevant national law, in the Czech Republic a gender pay gap exists, and
 - there is a very low proportion of women in decision-making posts in private companies.

4. In its decision on admissibility of 4 July 2017 the Committee concluded that the collective complaint examined was admissible in respect of the first ground under Article 4 § 3 of the Charter and in respect of the second ground under Article 1 of the 1988 Additional Protocol (“the Protocol”). Therefore the Government shall express their opinion on the collective complaint only in light of those two provisions and they shall not analyse the Czech Republic’s obligations under other Charter provisions. They shall also not express their opinion on Article 4 § 1 of the Charter, to which the Czech Republic has not acceded, and on claims of a violation of the Revised European Social Charter, which the Czech Republic has not ratified.

5. Article 4 § 3 of the Charter reads:

“With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

(...)

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

6. Article 1 of the Protocol reads:

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

- access to employment, protection against dismissal and occupational resettlement;
- vocational guidance, training, retraining and rehabilitation;
- terms of employment and working conditions including remuneration;
- career development including promotion.”

I. ALLEGED VIOLATION OF ARTICLE 4 § 3 OF THE CHARTER AND ARTICLE 1 OF THE PROTOCOL IN RESPECT OF THE FIRST GROUND

7. In the first place the Government would argue that although in its extensive complaint the complainant organisation refers to a lot of statistical data and reports of international monitoring bodies, in the collective complaint there are almost no details of a specific act or omission by the State on the basis of which the complainant organisation believes that the Czech Republic should be responsible for violations of claimed provisions (*a contrario*, *Confédération française de l'encadrement CFE-CGC v. France*, collective complaint no. 56/2009, decision on the merits of 23 June 2010, §§ 7 and 48–52).

8. In the light of the Committee's decision of 4 July 2017 on the admissibility of the present collective complaint (see § 7 of the decision) the Government consider that as regards the claim of the gender pay gap, the complaint is admissible only to the extent of the criticism of the bodies responsible for monitoring the effective performance of labour law obligations, specifically the State Labour Inspection Office (“the Labour Inspectorate” or “the Inspectorate”), regional inspectorates and the Public Defender of Rights. According to the complainant organisation those bodies are failing as regards the equal pay of women and men. Although the complainant organisation does not claim that the domestic law is not compatible with the Charter, it indicates that the domestic law framework is not effective in practice.

9. The Government consider the claims made by the complainant organisation concerning the acts and omissions of the State to be oversimplified and they deem it necessary to comment on those claims in a wider context. They would recall that the guiding principle concerning the implementation of international obligations in the area of economic, social and cultural rights, which is embodied, *inter alia*, in Article 2 § 1 of the International Covenant on

Economic, Social and Cultural Rights¹ and the Charter's Preamble, is the *principle of the progressive realisation* of the relevant obligations. The fact that in the light of the statistical data the state of affairs as regards the gender pay gap in the Czech Republic (or another 14 member States of the Council of Europe against which a similar collective complaint lodged by the complainant organisation is also directed) is illustrative of a situation that certainly deserves great attention and additional activity of the State does not mean *per se* that the Czech Republic is violating the relevant provisions of the Charter or the Protocol. The Government believe that the present collective complaint falls short of clearly defined claims and a more thorough analysis of the situation in the Czech Republic using the methodology pertaining to the assessment of performance of State's obligations in the area of economic, social and cultural rights.² They are then of the view that it is not the Committee's role to remedy those deficiencies of the complaint.

10. In the light of the above, the Committee should only address the issue of whether the measures already adopted by the State authorities of the Czech Republic in this area are sufficient with regard to objective circumstances and whether in fulfilment of its obligations under the Charter and the Protocol and in the context of its long-term dialogue with the Committee through the reporting mechanism, the Czech Republic acts in good faith and pursuing the object and purpose of the Charter as required by the general rule of interpretation in Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969.

11. In this context the Government would also note that in the past, they have already mentioned a number of relevant facts within their dialogue with the Committee and that all this information is completely public. The Government consider it to be redundant to address in detail the related aspects, which the complainant organisation does not mention in its collective complaint. Despite that, the Government shall do so to a limited extent in order to clarify and set right the biased image portrayed by the complainant organisation. Therefore with regard to the complexity of the issue, in the following sections the Government shall concentrate on:

- (i) The Czech Republic's obligations under the relevant Charter and Protocol provisions,
- (ii) The basis for legal assessment of whether in any particular case there is discrimination,
- (iii) The situation in the Czech Republic and assessment and relevance of the statistical data referred to by the complainant organisation,

¹ Cf. also General Comment No. 3 on Article 2 § 1 of the International Covenant on Economic, Social and Cultural Rights (The Nature of States Parties' Obligations).

² Cf. e.g. Fukuda-Parr, S., Lawson-Remer, T., Randolph, S., *Measuring the Progressive Realization of Human Rights Obligations: An Index of Economic and Social Rights Fulfillment*, Department of Economics working paper series 22, University of Connecticut (2008).

- (iv) The issue whether the Czech Republic proceeds in order to achieve equal pay for work of equal value,
- (v) Domestic legal safeguards against treatment in violation of Article 4 § 3 of the Charter and Article 1 of the Protocol, and
- (vi) Criticised activities of the State Labour Inspection Office and the Public Defender of Rights.

(i) On obligations under the relevant provisions of the Charter and the Protocol

12. According to the Committee, Article 4 § 3 of the Charter enshrines four aspects. *First*, the legislation of a State must prescribe that men and women workers must receive equal pay not only for equal work but also for work of equal value. *Second*, any clauses of collective agreements or individual contracts which contravene this principle must be declared null and void by law. *Third*, the protection of this right must be ensured through adequate remedies. *Fourth*, workers must enjoy effective protection from measures of retaliation arising from their claim for equal pay (notably protection against dismissal) (*cf.* the Committee's Statement of interpretation VIII on Article 4 § 3 of the Charter).

13. Under the Committee's Statement of interpretation XIII-5 on Article 1 § 2 and Article 4 § 3 of the Charter and Article 1 of the Protocol, all three provisions entail the obligations (a) to promulgate the rights concerned in legislation, (b) to take legal measures to ensure the effectiveness of the rights concerned, (c) to define active policies and to take measures to implement them, and thus the rights concerned, in practice. In respect of the first and second obligations, those are specifically the obligation to introduce safeguards against retaliatory measures by the employer, to lay the burden of proof on the employer and to provide for the possibility to impose sufficiently dissuasive sanctions for discrimination based on sex. The Government shall express their opinion on the individual obligations in detail below.

It is clear that the above obligations of the State can be placed in two categories, i.e. obligations of *result* and obligations of *means*. The obligation of result can include the promulgation of the rights concerned in domestic law and the taking of legal measures to ensure the effectiveness of the rights concerned. The Government would recall that the complainant organisation itself refers to the promulgation of the relevant obligation under the Charter in domestic law and does not claim that the provisions are not sufficient. Although the Government shall also address, in the following, the issue of whether by adopting an adequate legal framework the State guarantees to individuals the opportunity to effectively remedy discrimination concerning unequal remuneration before a court or another competent body, with regard to the nature and extent of the complainant organisation's claims (see §§ 7–11 above) the Government shall then concentrate in detail on, in particular, the implementation of the obligations of *means*, i.e. measures that lead to the progressive realisation of rights under the relevant provisions of the Charter and the Protocol.

(ii) The basis for legal assessment of whether there is discrimination

14. The complainant organisation raises objections relating to discriminatory treatment of women as regards unequal remuneration of women and men. Such discriminatory treatment is prohibited by both of the above Charter and Protocol provisions, taken separately and combined.

15. According to the established case law of the European Court of Human Rights (“the Court”) discrimination means that there must be a difference in the treatment of persons in *relevantly similar situations* that is not reasonably and objectively justified. Put it other way round, if the treatment under consideration does not concern persons in relevantly similar situations, then no discrimination could have taken place (*cf.* the Court’s judgments in cases of *Carson and Others v. the United Kingdom*, no. 42184/05, judgment [GC] of 16 March 2010, §§ 83–90; or *Nylund v. Finland*, no. 27110/95, decision of 29 June 1999, part B.2 of the law section).

16. The issue of whether the alleged unequal treatment of women and men, i.e. their unequal remuneration, concerns situations that can objectively be considered to be *relevantly similar*, is therefore crucial also for the facts serving as the basis for assessing the merits of the present complaint. Therefore, in the following section the Government shall express their opinion on the facts that the complainant organisation assesses in a very simplified way using statistical data. And indeed, a careful analysis of the relevant statistics clearly suggests that the situation in the Czech Republic in the field of *gender pay gap* is much more complex than the situation described by the complainant organisation. The State is aware thereof and the measures that it takes are not limited to the legal framework, but are aimed at tackling the structural problems in which the issue of unequal remuneration of women and men in the Czech Republic is embedded.

(iii) On the situation in the Czech Republic and on the assessment and relevance of the statistical data

17. It is a fact that in 2015, the *gender pay gap* amounted to 22.5% to the detriment of women in the Czech Republic.³ However, according to up-to-date data from the Czech Statistical Office, in 2016 men’s and women’s average gross monthly wages amounted to CZK 30,842 and CZK 24,094 respectively.⁴ Therefore the difference between women’s and men’s average wages in 2016 amounted to 21.9% to the detriment of women.⁵

18. First of all, a more appropriate indicator for monitoring differences in earnings would be provided with the focus on the difference between wage

³ See

<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc340&plu gin=1>.

⁴ The official exchange rate proclaimed by the Czech National Bank on 3 November 2017, i.e. the date of these Observations, is 1 EUR equalling 25,650 CZK.

⁵ For details see <https://www.czso.cz/documents/10180/32853391/300002164435.pdf/16d703e1-3681-408b-826c-a3157dc184ee?version=1.1>.

medians, because the median represents more reliably the level of wages of the majority of population. According to the Czech Statistical Office's data, women's and men's wage medians in 2015 amounted to CZK 21,461 and CZK 25,688 respectively. Therefore the difference between the wage medians for women and men amounts to 16.5% to the detriment of women and that difference is much lower than in the case of the average.⁶

19. Furthermore, as regards the difference between average wages of women and men it must be noted that this difference is not caused by direct wage-related discrimination (violation of the right to equal pay for equal work or work of equal value), but by structural factors, in particular the horizontal segregation of the labour market that consists in, *inter alia*, a high concentration of men or women in a specific sector of the labour market or in specific professions described in detail below.

As described above, however, discrimination is only present in situations where there is difference in the treatment of persons in *relevantly similar situations* that is not reasonably justified. Therefore in case of discrimination on the ground of remuneration, discrimination can only occur in cases when persons receive different remuneration for equal work or work of equal value. Since the overall average wages and the wage median for all women and men in the Czech Republic cover employees in all posts and in all sectors of the labour market, it is not possible to deduce in a simplified manner that women in the Czech Republic face direct discrimination in the field of remuneration.

20. The Government point out that there are certain specific characteristics in the traditional representation of men and women in various sectors of the labour market. As the Czech Statistical Office's data show, for example in the education sector there is a great majority of women; in 2015, 239,000 women and only 67,000 men worked in the education sector, and 263,000 women and only 61,000 men worked in the health and social care sector.⁷ In both cases those are sectors in which the wage level is traditionally lower. In 2015, the average wages in the education sector and in the health and social care sector amounted to CZK 25,728 and CZK 26,971 respectively.⁸ It must be added that in both sectors a significant proportion of the employees are persons with university education at the master's level or with higher college education or bachelor's education and those groups naturally are, in overviews of average wages by education, groups with the highest income. It can be deduced from the data of the Ministry of Labour and Social Affairs that in 2015, the average earnings of

⁶ Cf. for details statistics of the Czech Statistical Office "Focus on Women and Men – 2016" and Table 4–35 "Average gross monthly earnings and medians of earnings", available here: <https://www.czso.cz/csu/czso/4-prace-a-mzdy-iwbtn13wat>.

⁷ Cf. for details statistics of the Czech Statistical Office "Gender: Labour and earnings – data" and Table 4.1 "Employees and Entrepreneurs by selected Characteristics, averages 2015", available here: https://www.czso.cz/csu/gender/1-gender_pracemzdy.

⁸ Cf. for details statistics of the Czech Statistical Office "Wages, costs of work – time series" and table "Average gross monthly wage by activity of CZ-NACE", available here: https://www.czso.cz/csu/czso/pmz_cr.

persons employed in the private sector and having master's education or having higher college or bachelor's education amounted to CZK 48,190 and CZK 32,775 respectively.⁹ In the public sphere, those averages amounted to CZK 35,940 and CZK 29,421 respectively.¹⁰ It is evident that the wage level in the sectors of education and of health and social care, in which women are significantly more represented than men, is considerably below the nationwide average earnings of persons with higher education.

21. On the other hand, in the sector of manufacturing we can see that the proportion of men is significantly higher; in 2015, 835,000 men and only 450,000 women worked there.¹¹ In 2015, average wages in this sector amounted to CZK 26,857 which is quite a high sum considering that the majority of posts in the manufacturing sector are not so demanding as regards the workers' education. In 2015, average wages of persons in the private sector with elementary or incomplete elementary education and with secondary education without GCSE amounted to CZK 18,647 and CZK 21,609 respectively.¹² When comparing those average earnings of persons with lower education, the earnings in the manufacturing sector, which is traditionally a male sector, were set very high.

22. The data on average wages of women and men must therefore be read in a wider context, including the context of the horizontal segregation of the labour market as indicated above. Therefore the Government believe that simple information about the average nominal wages of men and women in a given year, as argued by the complainant organisation, does not form any basis for comparing equal work or work of equal value, and such information can therefore in no way form a basis for a conclusion about women's discrimination in the field of remuneration.

(iv) Issue of whether the Czech Republic takes necessary measures in order to achieve equal pay for work of equal value

23. In the first place it must be noted that the current Government have been aware of the existing differences between average wages of women and men and in accordance with their Manifesto they regard the right to equal pay for equal or comparable work as one of their priorities in the field of equality of women and men.¹³ The Government approved, in their resolution of November

⁹ Cf. for details the Average Earnings Information System, year 2015, wage sphere. Available here: <http://www.ispv.cz/cz/Vysledky-setreni/Archiv/2015.aspx>.

¹⁰ Cf. for details the Average Earnings Information System, year 2015, salary sphere. Available here: <http://www.ispv.cz/cz/Vysledky-setreni/Archiv/2015.aspx>.

¹¹ Cf. for details statistics of the Czech Statistical Office "Gender: Labour and earnings – data" and Table 4.1 "Employees and Entrepreneurs by selected Characteristics, averages 2015", Available here: https://www.czso.cz/csu/gender/1-gender_pracemzdy.

¹² Cf. for details the Average Earnings Information System, year 2015, wage sphere. Available here: <http://www.ispv.cz/cz/Vysledky-setreni/Archiv/2015.aspx>.

¹³ For details see the Priorities of the Government of the Czech Republic (in English): <http://www.vlada.cz/en/media-centrum/dulezite-dokumenty/policy-statement-of-the-government-of-the-czech-republic-116171/>.

2014, the Government Strategy for Equality of Women and Men in the Czech Republic for 2014–2020 (“the Strategy”), to which the complainant organisation also refers in section 4.3 of its collective complaint. The Strategy is the main framework for application of policy of equality between women and men in the Czech Republic and it defines the question of equality between women and men as a societal priority. It defines nine strategic areas with goals which must be achieved by 2020, including gender equality on labour market and in business in which the *gender pay gap* is identified as one of the problems. The main goals in this area of the Strategy include strengthening the independence of women and men in economy, strengthening economic position of women, reducing the gap between payment of women and men to the average of EU and increasing employment of women to 65%.¹⁴

24. In connection with the Strategy, every year the Government approve Updated Measures of the Priorities and Policies of the Government in Promoting of Gender Equality (“Updated Measures”). Updated Measures for 2017 also include important measures in the field of education, promotion of tools of an active policy to support employment of disadvantaged groups in the labour market and monitoring and keeping of anonymised statistics on the level of salaries of female and male employees in State administration in the various salary grades and itemised by sex, and securing of salary transparency.¹⁵

25. An important element of the Government’s activities in combating economic inequalities between men and women is the implementation of a project entitled “22 % k rovnosti” [22% to Equality] by the Ministry of Labour and Social Affairs. That project is specifically intended to reduce the difference between women’s and men’s wages. In particular, the aim is to reduce the *gender pay gap*, to prevent discrimination in remuneration and to secure compliance with law in practice in cooperation with the Labour Inspectorate, general interlinking of the main players in order to change the existing unsatisfactory situation, to raise awareness of the problem and its complexity, and to propose and verify innovative tools and policies to address the issue. While the budget for the whole project amounts to CZK 85 million, the latter includes, in particular, systemic measures such as an action plan to tackle unequal remuneration and proposed legislation to support employers promoting equality of remuneration for women and men, an educational campaign entitled “Rovná odměna” [Equal Remuneration] (see www.rovnaodmena.cz) and the transformation of the *Logib* system (Swiss software analysing inequalities in the area of remuneration in companies). The project also plans several analyses.

First of all, on 1 November 2017 the analysis entitled “*Current differences in remuneration of women and men in the Czech Republic: an in-depth analysis of statistics and an international comparison*” [Aktuální rozdíly v odměňování

¹⁴ For details see the Strategy (in English): http://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/Government_Strategy_for-Gender_Equality_2014_2020.pdf.

¹⁵ For details see Updated Measures (in Czech) here: <http://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/Priority-2017.pdf>.

žen a mužů v ČR: hloubková analýza statistik a mezinárodní srovnání] was published and is considered to constitute a unique (at least in the European context) statistical analysis in the relevant domain. Furthermore, an analysis of data of the Average Earnings Information System, a public opinion poll concerning equal remuneration, and an analysis of the causes and processes leading to the gender pay gap in the Czech Republic are foreseen. Other planned outputs of the project include a methodology for regional Labour Inspectorates and for labour offices. The Public Defender of Rights actively participates in the preparation of the methodology, in particular as regards the preparation of the methodology and, being an observing party, pilot inspections of regional Labour Inspectorates.

26. As mentioned above, the differences between average wages of women and men are caused by a number of various structural factors. The Government have therefore adopted a number of measures aimed at those structural causes.

27. One of the structural causes of the large difference between average wages of women and men is men's low participation in the care for family (including a low rate of parental leave). An amendment to Act no. 187/2006, on sickness insurance,¹⁶ introduced a new postnatal care allowance for fathers. Its main purpose is to strengthen the bond between the child and both parents in the early weeks of the child's life and to support and motivate the fathers to participate in the care for the newborn and to promote relationships within the family. The introduction of the postnatal care allowance for fathers will create room for men's participation in care for little children and the household and it will also allow the fathers to develop their parental competences while preserving the security of their employment and earnings.

28. Another structural measure to remove the differences between average wages of women and men is the support for work-life balance including the availability of child care services. In this domain, the Ministry of Labour and Social Affairs supports in particular children groups and the so-called micro-nurseries.¹⁷

29. In the area of support for equality of women and men (including the elimination of pay inequality) the Government also carry out public education activities. Within a project financed from the Norway Grants, in November 2016, the Office of the Government of the Czech Republic launched an educational campaign entitled "*To je rovnost!*" [*That Is Equality!*] which aimed at promoting equality between women and men. As part of the campaign, in the first half of 2017, TV adverts were aired by the Czech Television and TV Nova; their purpose was to promote work-life balance (including men's

¹⁶ Act no. 148/2017.

¹⁷ The pilot project to support micronurseries financed by the European Social Fund, for creating and pilot verification of a new type of care for children from six months of age in a small group of a maximum of four was supported by call for proposals no. 126 for the Czech Republic Regions and call for proposals no. 127 for Prague. A total of 123 applicants applied under those calls for proposals. 72 projects were selected to be financed for a total of CZK 133,240,975.53.

motivation to be on parental leave) and to prevent domestic violence. The “*To je rovnost*” campaign continues through Facebook¹⁸ and its website,¹⁹ where topics related to equality of women and men are further promoted.

(v) On legal guarantees of protection against treatment in violation of Article 4 § 3 of the Charter and Article 1 of the Protocol

30. The Government are convinced that domestic law provides a comprehensive system of safeguards of the right to a fair remuneration as required by Article 4 § 3 of the Charter and Article 1 of the Protocol. In accordance with the latter provision (see § 3 of Committee’s Statement of interpretation XIII-5 on Article 1 § 2 and Article 4 § 3 of the Charter and Article 1 of the Protocol) the Czech legal order contains a firm and effective national system of remedies that allows the exercise of the rights in question.

31. The complainant organisation lists the statutory provisions in section 4.3 of its collective complaint. Therefore, in that respect, the Government would only add that the fundamental right to a fair remuneration is enshrined in Article 28 of the Charter of Fundamental Rights and Freedoms and it is a firmly set fundamental right that, in the light of Article 3 § 1 of the Charter, is guaranteed to everybody “*irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status*”. Nevertheless, it is crucial that the complainant organisation does not challenge the legal order as such, but only its application (see the quote of the conclusions of the Public Defender of Rights and the Labour Inspectorate in section 4.4 of the collective complaint; or the reference to the European Commission’s report on the situation in the Czech Republic for the period from 1 January 2014 to 1 July 2015 entitled *How are EU rules transposed into national law?*).

32. As regards the effectiveness of the legal framework, in particular in relation to the remedies against discriminatory treatment on the ground of sex, the Government would refer to the fact that the area of the *gender pay gap* and discrimination in remuneration of women and men in the Czech Republic is intrinsically linked to a small number of court actions claiming violations of the Antidiscrimination Act on the grounds of unequal remuneration. The reasons for this situation are complex and include legal, sociological and psychological aspects. The factors that may contribute to the passive approach taken by discriminated women to bringing actions must be viewed in their mutual combinations and not individually. In particular, it is necessary to refer to difficulties in making comparisons when assessing unequal remuneration. When comparing, the persons who are being compared also have, in addition to sex as a variable, other more or less quantifiable characteristics (education, practical experience, command of languages, etc.).

¹⁸ For details see www.facebook.com/tojerovnost/?fref=ts.

¹⁹ For details see www.tojerovnost.cz.

33. In this respect, the Government consider the possibility of compensation and sanctioning, the financial burden related to court proceedings, the limitation rules, lack of confidence in the justice system and fear of victimisation, or measures of retaliation, to be the principal issues being discussed.

a) The possibility of compensation and sanctioning

34. In relation to the national legal framework, the low rate of antidiscrimination actions for unequal pay on the ground of sex may be caused, first of all, by fear of limited options for compensation and sanctioning. However, the Government are convinced that those fears are not justified.

35. Specific legal remedies against discrimination in labour relations are provided in Article 10 §§ 1 and 2 of the Antidiscrimination Act (Act no. 189/2009) and those are (a) cease and desist from discrimination, (b) remedying the consequences of the discriminatory act, and (c) just satisfaction. Should those remedies not appear sufficient, in particular due to the fact that a person's good reputation or dignity or respect in society has been considerably impaired owing to the discrimination, the person shall also have the right to demand (d) monetary compensation for non-pecuniary damage.

36. The legislator's preferred option is the action to cease and desist from discrimination aimed at refraining from discrimination or at preventing the discrimination from continuing by making organisational changes or by withdrawing the discriminatory dismissal. In this regard, reference can be made to a requirement of protection from measures of retaliation under Article 4 § 3 of the Charter and Article 1 of the Protocol (see § 12 above) and it can be stated that the Czech legal order contains that protection in the form of the action to cease and desist from discrimination, because the Antidiscrimination Act considers maltreatment, sanctioning or disadvantaging that has occurred as a result of exercising the rights under this Act to amount to persecution, which itself is a form of discrimination.

37. A second possible remedy is an action to remove the existing consequences of the discriminatory act. In general, it can be said that the manner in which consequences of discrimination are removed should correspond to the content, form and extent of the unlawful discriminatory interference. The decision is then most often enforced by the application of Article 351 of the Civil Procedure Code (Act no. 99/1963), according to which "*where the decision being enforced imposes another obligation, the court shall levy a fine of up to CZK 100,000 on the liable person for the breach of such obligation duty*" and "*where the liable person fails to carry out the decision being enforced even after having been fined, the court shall, upon the entitled person's motion, levy additional adequate fines on the liable person until the enforcement of the decision is discontinued*".

38. As regards the remedy of just satisfaction, that sanction typically takes the form of an apology, or mere ruling of the court that the right to equal

treatment was violated. However, it is much more important that it is possible to claim monetary compensation for non-pecuniary damage under Article 10 § 2 of the Antidiscrimination Act when remedies other than monetary ones do not provide the claimant with real and effective protection and are not, at the same time, dissuasive *pro futuro* (at this point again the Government refer to the related obligation under Article 4 § 3 of the Charter and Article 1 of the Protocol).

It is also appropriate to recall Article 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, in the light of which the compensatory remedy under Article 10 of the Antidiscrimination Act should be interpreted. In the decision-making practice of the Czech courts, especially the Supreme Court,²⁰ a new approach to discrimination cases has been established; in comparison with the past, the new approach takes into consideration interpretation, which is in compliance with the above specified Council Directive, of Article 10 § 2 of the Antidiscrimination Act regarding its aspect that although the compensation for non-pecuniary damage in antidiscrimination cases plays mainly the role of satisfaction, it is also necessary to consider its preventive and sanctioning role. This recently established interpretation of the need for the imposed sanction to be effective, proportionate and dissuasive is naturally leading to increased compensation awarded in practice.

According to the latest issue of a renowned commentary on the Antidiscrimination Act, such consistent interpretation of the provision concerned should also take into consideration the general provisions in the Civil Code (Act no. 89/2012) when considering the amount and form of the compensation for non-pecuniary damage caused by discrimination (also the one concerning differences in women's and men's remuneration). This should lead to a further empowerment of discrimination victims as regards their prospects of just satisfaction.²¹

39. With regard to the current regulations, teachings of academia, commentaries on laws that provide guidance to the judicial practice and also the consistent interpretation of the law by the supreme judicial bodies, it is therefore possible to consider the available compensatory and sanctioning tools that are guaranteed by domestic law to be sufficient.

b) Financial burden related to court proceedings

40. The “unwillingness” of people affected by discrimination to claim their right to equal remuneration can also be caused by the financial burden related to court proceedings. In general, it is possible in this respect to refer to

²⁰ The Supreme Court's judgment of 7 October 2009, File No 30 Cdo 4431/2007, concerning the subsidiary preventive role of compensation for non-pecuniary damage.

²¹ KÜHN, Zdeněk. § 10. In: BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KOLDINSKÁ, Kristina, KÜHN, Zdeněk, KÜHNOVÁ, Eva, WHELANOVÁ, Markéta. Antidiskriminační zákon [the Antidiscrimination Act]. Second edition. Prague: C. H. Beck, 2016, p. 369.

a possibility to ask for free legal aid, whereby the Czech Bar Association can assign a lawyer to people in need, the lawyer being entitled to no fee or only to a reduced fee, and being obliged to accept that case; or where it is necessary for the protection of the party's interests, the presiding judge shall appoint a legal representative at a request of a person in the case of whom conditions for exemption from court fees have been met.²²

However, discrimination victims who intend to initiate a civil dispute or a dispute in administrative court proceedings do not have to approach a lawyer; under Article 11 of the Antidiscrimination Act they can approach a juristic person addressing discrimination issues and have that person represent them.

Also the Public Defender of Rights provides methodological assistance to discrimination victims when filing motions to initiate proceedings on the grounds of discrimination.²³

41. When considering the financial burden caused by defending the rights of discrimination victims, a major role can also be played by the court fees or the issue of legal costs in addition to the costs of representation. Until 1 October 2017, in discrimination cases, a motion to initiate proceedings used to be subject to a charge of CZK 2,000, unless it contained a motion to award monetary compensation for non-pecuniary damage. If the motion contained a motion to award monetary compensation for non-pecuniary damage, the court fees were calculated on the basis of the amount claimed, i.e. if the amount claimed did not exceed CZK 200,000, the court fees amounted to CZK 2,000, if the amount claimed exceeded CZK 200,000, the courts fees amounted to 1% of that amount.²⁴ Such legislative framework was result of legislative changes that reduced the previous high court fees applicable to actions for monetary compensation for non-pecuniary damage. Yet what is more important, by an amendment of the Act on Court Fees effective from 1 October 2017, the court fees in relation to (explicitly) actions based on the Antidiscrimination Act were set to CZK 1,000 only.²⁵

In this respect we can point out the matching opinions of the commentaries and case law regarding the reimbursement of the costs of proceedings. The interpretation according to which the claimant shall be regularly awarded full reimbursement of the costs of proceedings against the defendant under Article 142 § 3 of the Civil Procedure Code if the claimant was not successful in the case only in respect of a part of the monetary compensation for non-pecuniary damage, where the decision on the amount of compensation is subject to the court's discretion, complies with the requirements for effective protection of discrimination victims.²⁶

²² See Article 30 of Act no. 99/1963, the Civil Procedure Code.

²³ See Article 21b of Act no. 349/1999, on the Public Defender of Rights.

²⁴ See Act no. 549/1991, on court fees, items 3 and 4 of the tariff.

²⁵ *Ibidem*, item 40 of the tariff.

²⁶ See KÜHN, Zdeněk. § 10, op. cit. footnote 20.

c) Limitation rules

42. The limitation aspect can, due to the nature of the issue, also be regarded as a certain constraint for the successful exercise of one's rights in courts, despite the fact that limitation is envisaged by the law and legitimate. Nevertheless, in case of the right to protection against discrimination, under Article 612 of the Civil Code, only the right to redress the damage caused to those rights is subject to limitation. This approach to claims of property (and thus also monetary) nature has also been confirmed by the Supreme Court, which refers to the principle of legal certainty.²⁷ The Government are of the view that such approach is completely legitimate. Furthermore, it must be stressed that the other above-mentioned claims that a victim of unequal remuneration can raise are not subject to limitation.²⁸

d) Lack of confidence in the justice system

43. One cannot rule out that a certain level of mistrust in the justice system can be one of the factors that may discourage discrimination victims from claiming their rights before courts. Lack of confidence in the courts and the justice system, as indicated by a Eurobarometer survey,²⁹ in which the Czech Republic was rated among three countries with the lowest confidence in the justice system, is, however, linked primarily to the poor general awareness of the options provided by the legal and justice system and of its actual functioning.

44. It follows from the statistics in the EU Justice Scoreboard 2017, which provides an overview of the quality, efficiency and independence of EU Member States' justice systems and is a tool that aims to assist them to improve the effectiveness of the national justice systems, that the Czech Republic is one of few countries in which there are currently efforts at reforming the justice system at the level of procedural rules, administration of courts, ICT development, promotion of ADR methods, court fees and legal aid. It also follows from the report that as regards the average length of proceedings the Czech Republic is rated ninth while the average length of litigious civil proceedings before first-instance courts is shorter than six months; it further follows that the Czech justice system has used modern information technologies for communication with parties for a long time and electronic submissions are available for courts at all levels. Although there is room for improvement for the Czech justice system it is evident that its condition has progressively bettered. These conclusions may then be proved not only by data but also by the public perception.³⁰

²⁷ Cf. judgment of the Supreme Court's Grand Panel of 12 November 2008, File No 31 Cdo 3161/2008.

²⁸ See KÜHN, Zdeněk. § 10, op. cit. footnote 20.

²⁹ EUROBAROMETER: European Commission. In: European Commission: Public Opinion [online]. [cit. 2017-09-25]. Available at: <http://ec.europa.eu/commfrontoffice/publicopinion>.

³⁰ For details see <http://ec.europa.eu/justice/effective-justice/scoreboard>.

45. Finally, it should be pointed out that the above-mentioned lack of confidence in the legal and justice system is not uniform across the public.³¹ Particularly persons over 54 show that lack, while nearly 90% of persons under 26 have no doubts about the justice system. That is an age group that defines the future perception of the Czech justice system in the next decade. Confidence in the justice system is also increasing in respect of people with university education. The statistical data show that in the Czech Republic women, as potential discrimination victims in the labour market, account for 61% of university graduates.³² It is therefore justified to assume that this group of women, who are active in the labour market and in the productive age, is not under the impression that the legal system in the Czech Republic is not functioning and as a group potentially vulnerable to discrimination it is aware of its rights and options following from those rights.

e) Victimisation and retaliatory measures

46. As regards the threat of further victimisation in cases where a discrimination victim herself or himself or through another person protects his or her rights, the Government are aware of the requirements for the State under Article 1 of the Protocol (see § 12 above) and they would note that the Antidiscrimination Act reflects that situation and considers maltreatment, sanction or disadvantage that has occurred as a result of exercising the rights under this Act to amount to persecution, which itself is a form of discrimination.

47. However, it is primarily important to note that according to Article 346b § 4 of Act no. 262/2006 (the “Labour Code”), the employer is prohibited to sanction or disadvantage her or his employee in any way for the reason that the latter seeks to remedy a breach of her or his rights related to work conditions including remuneration. Furthermore, according to Article 16 § 1 and 2 of the Labour Code, it is any employer’s obligation to secure equal treatment of all employees with regard to working conditions and remuneration, any discrimination being prohibited. The Inspectorate then controls compliance with these rules on the basis of Article 3 § 1 a) of the Act no. 251/2005 (the “Act on the Labour Inspection”) and may impose pecuniary sanctions for infractions or administrative delicts in the amount of CZK 500,000 for a conduct of unequal treatment in the relevant area.

An employee is also protected against an arbitrary dismissal as one may not be dismissed for other than the reasons specified by Article 52 of the Labour Code. An employee may then claim nullity of any such dismissal within two

³¹ Češi se nesoudí kvůli času a důvěře v soudnictví [The Czechs do not sue because of time and confidence in the justice system]. In: Česko se soudí: Nechceme se soudit [online]. [cit. 2017-09-25]. Available at: <http://www.ceskosesoudi.cz/cesi-se-nesoudi-kvuli-casu-a-duvere-v-soudnictvi/>.

³² ŠPRINCOVÁ, Veronika. Ženy a muži ve společnosti a rozhodování [Women and men in the society and decision-making]. In: Fórum 50 % [online]. [cit. 2017-09-25]. Available at: http://aa.ecn.cz/img_upload/666f72756d35302d6669313030313139/zeny-a-muzi-vespolecnosti-a-rozhodovani.pdf.

months after such dismissal was to be of effect (Article 72 of the Labour Code). According to Article 63 of the Labour Code, where the employer has given an employee notice that is void or terminated an employment relationship with her or his employee either immediately or during the trial period in a void manner, and the employee has informed the employer in writing without delay that she or he insists on being further employed by this employer, the employee's employment relationship will be maintained and the employer shall pay compensatory wage or salary to this employee. Such compensatory wage or salary pursuant to the first sentence shall be due to the employee (in the amount of her or his average earnings) as of the date she or he has informed the employer that she or he insists on continuation of the employment relationship until the time when the employer enables this employee to continue her or his work performance or until the employment relationship is brought to an end in a valid manner.

48. In addition to that it is necessary to refer to the above action to cease and desist under the Antidiscrimination Act that can be used to defend oneself effectively against the employer's retaliatory measures.

f) Conclusion

49. In conclusion it can certainly be observed that in addition to lawyers' training and raising the awareness of the issue at stake (see above and §§ 60-65 below), there exist measures using which, *de lege ferenda*, it would be possible to boost the proactive approach to the defence of the rights of discriminated women. At present, for example, the introduction of a class action into the legal order is being considered, but no final decision on the concept of that regulation has yet been made. The efficiency of that regulation and its constitutionality are being emphasised and draft general theses of the law should be, however, prepared by the Ministry of Justice still in 2017. It can be believed that the fact that a victim of discrimination could "easily" join a class action can have a crucial psychological effect that positively influences the individual's willingness to resort to a court and initiate proceedings.

50. Another possible measure that empowers victims of discrimination in the field of equal remuneration would be the introduction of a public-interest action whereby a public body, in the Czech Republic it would probably be the Public Defender of Rights, would be entitled to bring such action, subject to statutory conditions, against entities violating the rights of a certain group of persons. The introduction of this type of action has been considered in the Czech Republic in recent years, but in January 2017 an amendment to the Public Defender of Rights Act was retracted. That amendment included, *inter alia*, the introduction of a public-interest action in antidiscrimination cases. The reason for the retraction was the absence of consensus among the political parties in the Chamber of Deputies of the Parliament of the Czech Republic.

51. Although the situation in the Czech Republic is not perfect and there is still room for improving the legislation and removing obstacles in women's difficult fight against remuneration discrimination, it should be concluded that

the national legal framework for the individual's protection against discriminating acts consisting of unequal remuneration for women and men is consistent, functioning and sufficient and does not amount to a violation of Article 4 § 3 of the Charter and Article 1 of the Protocol by the State.

In the following section the Government shall briefly express its opinion on, *inter alia*, the Labour Inspectorate whose activities in the area of administrative sanctions for violations of labour law regulations on equal remuneration of women and men must be taken in conjunction with individuals' options for claiming their rights in civil procedure as described above.

(vi) Activity of the State Labour Inspection Office and of the Public Defender of Rights

a) Activity of the Labour Inspectorate

52. The complainant organisation claims that in 2014, the Labour Inspectorate found violations of the equal treatment principle in 67% of all inspections that it carried out, resulting allegedly in 16 fines [in its collective complaint the complainant organisation refers to the Czech Republic's reply to the Committee on the Elimination of All Forms of Discrimination against Women ("CEDAW") from November 2015]; the complainant organisation attributes this situation mainly to the fact that equal pay for women and men is not a priority for the State Labour Inspection Office.

53. The Government absolutely disagree with this assertion. Inspecting equal treatment and non-discrimination in the exercise of the right to employment and of the rights in the workplace is among the main inspection missions of the Labour Inspectorate approved every year. Namely, in 2014, the two key inspection objectives were indeed 1) checking the observance of the equal treatment and non-discrimination obligations in the exercise of the right to employment and 2) checking equal treatment, non-discrimination in the workplace and the observance of the protection of personal rights of employees. The Labour Inspectorate adopted and implemented similar main inspection tasks in 2015 and 2016. In 2016, the Inspectorate even carried out two extraordinary inspection campaigns aimed at equal remuneration for women and men, and in 2017 it has dedicated a special inspection objective to the equal pay issue, which envisages some 160 inspections to be carried out in this area.³³

54. In addition to the data sent by the Czech Republic to the CEDAW in November 2015, the Government also specify that the inspections related only to discrimination in the exercise of the right to employment. In addition to those, the Inspectorate carried out another 197 inspections in 2014, which were specifically focused on equal pay for men and women, during which in 41 cases non-compliance was found and six fines totalling CZK 245,000 were levied.

³³ For further details please refer to http://www.suip.cz/_files/suip-1139bc84bfa79d7577ac722a0882c18b/rocni-program-kontrolnich-akci-suip-na-rok-2017.pdf.

55. In sum, 413 inspections focused on the gender pay gap were carried out in 2016 at 409 employers, of which 319 were legal entities and 90 were natural persons. Of the total number of inspections, 107 inspections revealed a violation of the equal treatment and non-discrimination principles, of which 45 were violations in the area of unequal treatment in terms of the pay for work of equal value.

56. In practice, inspections focused specifically on equal treatment and non-discrimination are conducted following, in particular, inspection requests, because those guide the inspectors towards targeted inspections. Of the total number of 7,395 inspection requests covering all the areas of the Inspectorate's inspection competences in 2016, nearly 5,000 referred to possible violations of legislation governing employment relations and working conditions, 393 concerned the observance of equal treatment or non-discrimination (i.e. 5.3% of the total number), 318 were directed at equal treatment and non-discrimination in the workplace and 75 specifically at equal treatment and non-discrimination in the exercise of the right to employment.

57. As to other activities in this area, it should be noted that the Inspectorate is an active partner for the civic society in projects dealing with this topic and that it also cooperates with the Public Defender of Rights. Specifically, the following can be mentioned:

- a) Specific training of inspectors in the area of equal pay for women and men in cooperation with the civic society;
- b) Carrying out inspections focused on this issue in line with the policy of the Ministry of Labour and Social Affairs and further to discussions with the Public Defender of Rights (see § 53 above): 34 pilot inspections were carried out in May and June and in October and November 2016;
- c) Key partnership with the Ministry of Labour and Social Affairs as part of the project “22 % k rovnosti” [22% to Equality], whose members also include, in addition to the Inspectorate and the Ministry, the Public Defender of Rights and renowned gender equality experts. This projects plans, among other things, further education of experts on the gender pay gap issues (for details see § 25 above).

58. As part of their activity inspectors also provide free legal advice in approximately 10,000 cases per year.

59. Thus, the criticism voiced by the complainant organisation as to the Inspectorate's laxity can therefore be clearly denied.

b) Activity of the Public Defender of Rights

60. The Public Defender of Rights also considers the issue of equal pay to be very important. In 2015 and 2016, her Office was the official partner of the public education campaign “Pozor na rozdíly v odměňování” [Beware of the Pay

Gap], the main objective of which was to raise awareness amongst the general public about unequal remuneration. Many debates with the public, lectures, discussions and round tables were held in all the Regions of the Czech Republic.³⁴

61. In 2015, the Public Defender of Rights initiated the drafting of a methodology intended for regional labour inspectorates, which was to help improve the efficiency of the Inspectorate's inspections in the area of equal pay for women and men. This methodology will be drafted as part of the project "22 % k rovnosti" (see §§ 25 and 57 above), the Office of the Public Defender of Rights being a key partner in the preparation of the methodology and in relation to the entire project.

62. In January 2016, the Public Defender of Rights organised an international conference on equal remuneration under the title "*Gender Pay Gap*", and then published the proceedings thereof.³⁵

63. The Public Defender of Rights also covered this issue within the European Network of Equality Bodies (Equinet). In 2016, she took part in the drafting of the "*Equinet Handbook: How to build a case on equal pay*"³⁶ and in September 2017 her Office co-organised an international workshop in Brno on the topic of how European equality bodies should handle complaints about unequal remuneration for women and men.³⁷ The knowledge gained from the international cooperation was also recently shared at the workshop "*The Pay Gap – A Winning Case in Court*", which the Public Defender of Rights co-organised in October 2017 together with the *Pro bono aliance* alliance and where the audience included lawyers and non-profit organizations.

64. At an individual level, the Public Defender of Rights only considered a few pay gap cases since 2009 as regards help to women who are discriminated in the remuneration area.³⁸ As described above, in this area victims typically do not claim their rights in spite of effective remedies being available. The Public Defender of Rights discussed the causes and consequences of underreporting in her research report from 2015.³⁹

³⁴ For further details, please see <https://www.jetofer.cz/>.

³⁵ The proceedings are available in English at: https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Sbornik_NORA_AJ.pdf.

³⁶ See <http://www.equineteurope.org/Equinet-Handbook-How-to-build-a-case-on-equal-pay>.

³⁷ See <http://www.equineteurope.org/Training-How-to-build-a-case-on-equal-pay>.

³⁸ Cases are published in ESO at <http://eso.ochrance.cz/Vyhledavani/Search>. The media reported the most extensively on the case of the Physician in Chief of the Pediatric Department of the Boskovice hospital, which however, did not result in a successful denouement in court. See letter by the Defender (Ref. 89/2012/DIS) available at: <http://eso.ochrance.cz/Nalezene/Edit/1918>.

³⁹ The Public Defender's report (in English) is available at: https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_EN_fi_n.pdf.

65. Having regard to the above, in this part we can also conclude that the criticism of the Public Defender of Rights about the *gender pay gap* topic is entirely inapposite.

(vii) Conclusion

66. It can be concluded that given all the activities that the State authorities are undertaking in respect of equal pay for women and men and given the consistent and effective legal framework for protecting the right of the individual to fair remuneration for work of equal value, the Czech Republic is not violating the obligations arising from the applicable provisions of the Charter and the Protocol.

67. The Government therefore propose to the Committee to hold in respect of this ground that there has been no violation of Article 4 § 3 of the Charter and of Article 1 of the Protocol in the case at hand (see, *mutatis mutandis*, *Finnish Society of Social Rights v. Finland*, collective complaint no. 107/2014, decision on admissibility and merits of 6 September 2016, §§ 49–53).

**II. ALLEGED VIOLATION OF ARTICLE 1 OF THE PROTOCOL
IN RESPECT OF THE SECOND GROUND**

68. As regards the second ground raised by the complainant organisation concerning the small proportion of women in decision-making posts in private companies, the Government respect the decision of the Committee declaring this ground admissible in light of its previous case law [see *European Federation of Employees in Public Services (EUROFEDOP) v. Italy*, collective complaint no. 4/1999, decision on admissibility of 10 February 2000, § 12].

69. However, they argue that the obligations of the State as the duty holder under international human rights law cannot require interferences with the private sector that would go beyond the legitimate legal framework and be contrary to the principles of a liberal democratic state governed by the rule of law. The *underrepresentation* of women in decision-making posts in private companies cannot be, for example, assimilated to the State's failure in its duty to inspect the private sector or practices that are unlawful at national level or *prima facie* in contravention of the international obligations of the State (*a contrario*, *International Commission of Jurists v. Portugal*, collective complaint no. 1/1998, decision on the merits of 9 September 1999, §§ 23–44). The Government are of the opinion that such interpretation of Article 1 of the Protocol would certainly contradict the rules of interpretation set out in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 1969.

Nevertheless, the Government submit their observations on this ground, in particular with a view to refuting the complainant organisation's assertion that the Czech State is not taking any measures in this matter.

70. Firstly, it must be noted that the complainant organisation has not offered any proof to support its claims (*cf.* section 4.5 of the collective

complaint) that there are no women CEOs in the largest commercial companies in the Czech Republic. As it would be difficult to find a genuine equivalent to the position of CEO (typical for English speaking business environment) in the business environment of the Czech Republic, supporting such an allegation would be overly simplifying. A position that may be comparable with a CEO would be a position of *director general* [*generální ředitel/ka*] which, however, is impossible to monitor statistically using public sources, the information on directors general being not included in the Czech Commercial Register. Therefore, the complainant organisation's statement that the situation in the Czech Republic is insufficient is rather misleading.

71. According to the European Institute for Gender Equality (EIGE) the representation of women in the top management of the largest listed companies in the Czech Republic stands at 7%,⁴⁰ while women accounted for 17.1% of the members of the wider managements of the largest listed companies in the Czech Republic.⁴¹ Over 37% of supervisory board members and over 17% of members of management boards of public limited companies were women. In the 250 largest Czech commercial companies, women accounted for 12.5% of the members of all governing bodies. The share of female company directors in private limited companies was 21.6%.⁴²

72. Increasing the representation of women in decision-making posts has also been one of the priorities of the most recent Government in the area of gender equality, as expressed in their Manifesto, and contrary to the allegation of the complainant organisation (see section 4.3 of the collective complaint) promoting the balanced representation of women and men was explicitly one of the priority chapters of the Strategy. In this matter the Government Strategy stated several specifically formulated objectives. The main objective is to achieve a minimum level of 40% representation of women in decision-making positions in the public and private sectors, the specific objectives being:

- a) Adoption and application of positive measures for a more balanced representation of women and men in decision-making positions in public and private spheres;
- b) Elaboration and presentation of an action plan for balanced representation of women and men in decision-making positions to the Government of the Czech Republic;
- c) Determination and fulfilment of objective and transparent rules for staffing decision-making positions in public and private spheres; and

⁴⁰ For details see http://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compex.

⁴¹ For details see http://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm.

⁴² For details see <http://diverzita.cz/wp-content/uploads/2017/05/Index-zastoupen%C3%AD-%C5%BEen-ve-veden%C3%AD-2017.pdf>.

- d) Systematic increasing of competencies of women for decision-making positions.

73. Further to the Strategy and Manifesto, the Government approved their Action Plan for Equal Representation of Women and Men in Decision-making Positions for the period from 2015 to 2018 (the “Action Plan”) in July 2016.⁴³ The Action Plan constitutes a comprehensive strategic document at the level of the Government of the Czech Republic, focusing specifically on this area. The document describes the current situation in terms of the representation of women and men in decision-making positions in the Czech Republic, including obstacles hindering the balanced representation of women and men in this area. The main tasks set by the Action Plan are:

- a) General tasks for promotion of balanced representation of women and men in decision-making positions;
- b) Tasks for the area of politics;
- c) Tasks for the area of public administration and other public institutions and
- d) Tasks for commercial companies.

74. In terms of the promotion of the balanced representation of women and men in decision-making positions in private commercial companies, the Action Plan sets out measures concerning:

- a) Increase the number of women in supervisory boards and boards of directors in commercial companies with state participation with the aim of gradually achieving the minimum 40% level of representation in these bodies by 2020 by the means of adopting numerous specific measures;⁴⁴
- b) In connection with the implementation of Directive of the European Parliament and the Council 2014/95/EU, introduce the duty to disclose data on the proportion of women and men in decision-making positions of the largest commercial companies and their regular sharing with the Czech Statistics Office;
- c) Set up targeted programmes in subsidy policies focusing on the support of mentoring, networking and development of the talents of women with the aim to achieve balanced representation of women and men in the decision-making positions in commercial companies including small and medium-sized startups; and
- d) Start to implement activities aiming to define the *Standard of company open to gender equality* as a motivation tool for the promotion of gender equality.

⁴³ For details see the Action Plan (in English): http://www.tojеровnost.cz/images/dokumenty/Action_Plan-Equal_Representation.pdf.

⁴⁴ *Ibidem*, chapter “10. D-Tasks for the area of commercial companies”, pp. 80–84.

75. The Government of the Czech Republic also promote gender equality through the subsidy programme of the Office of the Government of the Czech Republic entitled “*Support of Publicly Beneficial Activities of NGOs in the Area of Gender Equality*” (for 2016 and 2017 the subsidy programme allocation was CZK 7 million per year), many of the supported projects focusing on the balanced representation of women and men in decision-making positions and the unequal position of women and men in the labour market. In 2017, the following projects were supported, for example: “*Systematické odstraňování genderových stereotypů v praxi*” [Systematically removing gender stereotypes in practice] (Gender studies, o.p.s., a charity), “*Vzdělávání proti genderovým stereotypům*” [Combating gender stereotypes through education] (NESEHNUTÍ, z.s., a registered society), “*Hájíme práva žen v České republice*” [Defending the rights of women in the Czech Republic] (Česká ženská lobby, z.s., a registered society) and “*Čas na paritní demokracii – rovné zastoupení žen v politice*” [Time for a parity democracy – equal representation of women in politics] (Fórum 50 %, o.p.s., a charity).

76. In the light of the above, the Government propose that the Committee holds that in the case at hand the Czech Republic is not violating its obligations under Article 1 of the Protocol.

III. AS TO THE JUST SATISFACTION CLAIM

77. The complainant organisation demands EUR 10,000 on the grounds of the costs of the legal representation of the complainant organisation by lawyer Anne Nègre.

78. In line with the reply of the President of the Committee of Ministers’ Deputies of the Council of Europe to the President of the European Committee of Social Rights, dated 28 April 2017, relying on a thorough debate on the issue of compensation for costs in collective complaints procedures by the Rapporteur Group on Social and Health Questions (GR-SOC) on 23 March 2017, the Government note that there are no legal grounds for awarding just satisfaction to the complainant organisation either under the Additional Protocol to the Charter providing for a System of Collective Complaints or in the Explanatory Report to the Protocol.

79. However, even in the hypothetical situation that such legal grounds existed it would always have to be established that such expenses were actually incurred and reasonable as to quantum (see *Confédération française de l’encadrement CFE-CGC v. France*, collective complaint no. 56/2009, decision on the merits of 23 June 2010, §§ 87–89; see also the judgment of the Court cited therein concerning, inter alia, the matter of costs of the proceedings in *Nikolova v. Bulgaria*, no. 31195/96, judgment [GC] of 25 March 1999, § 79). That said, the complainant organisation’s proposal is manifestly excessive and is not supported by any evidence. Moreover, it should be added that although the drafting of collective complaints lodged simultaneously against 14 other

States parties to the Additional Protocol to the Charter providing for a System of Collective Complaints did require a certain effort, it should not go unnoticed that the complainant organisation is demanding the same amount in those other proceedings without providing any explanation.

80. In any case, however, even if the Committee finds that there has been a violation of the Charter or the Protocol the Committee does not have the power to decide about costs of the proceedings or to award the complainant organisation any other financial compensation.

OVERALL CONCLUSION

PROPOSED DECISION OF THE COMMITTEE

81. In the light of the above the Government of the Czech Republic in their observations on the collective complaint proposes that the Committee holds that:

- the overall gender pay gap situation, considering the activities of the State in the matter, is not in contravention of Article 4 § 3 of the Charter and Article 1 of the Additional Protocol of 1988, and
- the situation in terms of the representation of women in decision-making posts in private companies does not constitute a breach of Article 1 of the Additional Protocol of 1988.

Vít A. Schorm
Agent of the Government
signed electronically

Vít Alexander
Schorm

Digitálně podepsal Vít Alexander Schorm
DN: c=CZ, 2.5.4.97=NTRCZ-00025429,
o=Česká republika - Ministerstvo
spravedlnosti [iČ 00025429], ou=Kancelář
vládního zmocněnce, ou=00916, cn=Vít
Alexander Schorm, sn=Schorm,
givenName=Vít Alexander,
serialNumber=P141632, title=ředitel odboru
Datum: 2017.11.03 19:02:07 +01'00'