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

28 May 2018

Case Document No. 6

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

**OBSERVATIONS BY EQUINET, EUROPEAN NETWORK OF
EQUALITY BODIES**

Registered at the Secretariat on 30 March 2018

Contributions of CITE to reply concerning the Complaint No. 136/2016- University Women of Europe

The Commission for Equality in Labour and Employment (CITE) was created in 1979 in order to fight discrimination and promote equality between women and men in labour, in employment and in vocational training.

Its main responsibilities are to promote:

- Equality and non-discrimination between women and men in labour, in employment and in vocational training;
- Protection of parentality (maternity, paternity and adoption);
- Reconciliation of professional, personal and family life.

Decree-Law no. 76/2012, of 26 March, approving the Legal Framework of the Commission for Equality in Labour and Employment

CITE'S LEGAL ACTIVITIES

❖ As the national mechanism whose mission is to pursue gender equality in work and employment, the protection of maternity and paternity and the reconciliation of professional, family and personal life, CITE undertakes a regular activity of general information about these rights, provides legal support to alleged gender based discrimination victims, as well as receives complaints and issues legal opinions concerning equality and non-discrimination in labour and employment. By fulfilling its mission, CITE **facilitates access of gender based discrimination victims to justice**, namely women who continue to be more discriminated against in the labour market.

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

CITE also issues **legal opinions**, which employers must obligatorily request before dismissing any pregnant worker, any worker who has recently given birth or who is breastfeeding, or male worker during the parental leave; opinions which employers must request in advance when they disagree with part-time or flexitime work for male or female workers with one or more children under the age of 12; as well as legal opinions related with other legal provisions on equality and non-discrimination between women and men.

Despite the existing gender pay gap, from January 1, 2010 to June 30, 2017 CITE only received nine complaints related with gender pay gap.

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

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

❖ The Social Dialogue and in particular Collective Bargaining should play an important role in the balanced search for solutions promoting greater equity and equality.

The Collective Labour Regulation Instruments (IRCT) are an important tool to consolidate the legal standards on equality and non-discrimination, through the possibility of agreement on clauses that prohibit discriminatory practices or by reinforcing what is already provided for by law as well as through, for example, positive measures, especially to combat endemic situations of occupational segregation, training and career development.

Since April 2011 CITE do the **Appraisal of the legality of collective bargaining provisions with regards 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, March 26; Law no. 23/2012, June 25.

The Collective Regulation Instruments appreciated that contain provisions not in conformity to the law are referred to the Public Prosecution.

With regard to assessed provisions, which were not considered illegal or discriminatory, but which had some formal inadequacy of legislation in the field of gender equality or parenting, recommendations were sent to the contracting parties, inviting them to promote the changes necessary to adapt these provisions.

In most situations where there is evidence of discrimination in the analysed clauses, the parties have accepted these recommendations and have changed them voluntarily in accordance with the Labour Code, without the need for legal action.

Since 2012 until the end of 2016, 822 instruments of Collective Labour Regulation Instruments (IRCT) were assessed. Of the 822 analysed, 59 IRCT contained illegal clauses, and the contracting parties were notified for a preliminary hearing. The total number of illegal standards was 145.

GENDER PAY GAP

❖ The right to equal pay for equal work or work of equal value enshrined in national legislation has not been fully realised in practice, as the statistics on wage inequality between women and men show. Therefore, reflecting on the causes of and the construction and testing methodologies that may act on the factors that contribute to the maintenance of the pay gap between the sexes is fundamental.

Thus, to tackle gender pay gap:

➤ 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" without a gender bias, and may be applied to various activity sectors.

This methodology for assessing the value of work without gender bias allows comparing the value of the professions mainly occupied by men or by women.

The methodology is an analytical method that allows a systematic analysis, evaluating and comparing the characteristics of each job in a company, organisation or sector, using precise and detail common criteria, in order to establish its relative value. Within a framework of equal pay, 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 low-wage earners, where mostly women are.

The methodology is an appropriate tool to measure and compare the value of the professions in a non-discriminatory manner and is designed to support organisations that want to implement a process for evaluating jobs with no gender bias. Its use allows revaluing the work and contributing to the objectivity of the HR management process and working organisation in order to promote equal pay between men and women.

During the project, this methodology was tested in several companies (mainly SME) of the food and beverage sector. Because of this process, some companies realised that some of the 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 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.

These results show some impacts in overcome gender occupational segregation on some specific small companies.

After the project finished, the job evaluation method developed within the frame of such project was applied in three 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 that are gender segregated and where the pay gap is gendered. This diagnosis allowed the trade union of these sectors and the employers' associations of the each sector to start a collective bargaining process in order to review some of the most gender-segregated occupations and include this into the collective labour regulation instruments.

➤ In 2013 it was prepared by 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, the **1st Report on Wage Differences by Economic Activity** with a view to 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. After this session, the Government proposed recommendations with the aim of eliminating the wage differences that have no objective justification.

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

These tools are available on CITE's website <http://calculadora.cite.pt/index.php/welcome/home>:

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 the work and the payment of salaries and other benefits to their workers.

As 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 pose as a potential cause of unequal treatment between men and women, with effect on 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, allowing knowing whether these differences are explained by objective factors or by the variable sex.

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 in the basic wage and in earnings. The "sex" 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 relations between CITE – Commission for Equality in Labour and Employment and Labour Conditions Authority (ACT), 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 ACT's inspection activity, the two entities, in a joint initiative, promoted the **National Action to Promote Gender Equality at Work** (<http://cite.gov.pt/pt/acite/campanhas006.html>).

The Action had one-year duration (September 2016 to September 2017) and 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 launching of the Action was held on September 20, 2016, with the participation of 124 people.

➤ From 2013, CITE celebrates the **National Equal Pay Day** every year to raise public awareness in order to reverse the persistent difference

between what women earn 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.

LEGISLATION

Resolution of the Council of Ministers n. 13/2013, March 8, 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 (paragraph 1 (a)).

Resolution of the Council of Ministers n.18/2014, March 7, provides a set of specific measures to combat gender pay gap in order to achieve effective gender equality.

The Resolution determines that:

- a) the companies of the State-owned sector prepare, every three years, a report on the salaries paid to women and men aiming the diagnosis and the prevention of unjustified differences in those remunerations. This report has to be disseminate 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 give response to situations of wage inequality between women and men.

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

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

WOMEN IN DECISION-MAKING POSITIONS

On June 30, 2015, CITE launched the **National Promotion Campaign Women on the Boards of Directors**, on Portuguese Communications Foundation, in Lisbon. (<http://cite.gov.pt/pt/acite/campanhas001.html>)

In 2015, in Portugal, 59% of people graduate with higher education and 54.8% of people with a doctorate degree were women. However, men occupied 91% of the seats of members of the Board of Directors of the 17 listed companies. In the absence of an objective reason for this disparity, CITE launched a campaign to raise awareness among stakeholders, seeking to change this trend.

This national impact campaign intended to carry the message to a large number of companies, social partners, workers, through several strategies, various formats and supports, in the TV and on radio, on the Internet and 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, related 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% while men is 84.5%.

In UE28 the average is 24.6% for women and 75.4% for men.

(http://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm/bar/year:2017-B1/geo:EU28,PT/EGROUP:COMP/sex:M,W/UNIT:PC/POSITION:MEMB_BRD/NACE:TOT)

Comparing with the data provided by the same Institute for the year 2014 there is a positive development that, however, deserves continued attention.

In Portugal, in 2014, the presence of women in the same positions was 9.5% and that of men was 90.5%, compared to the average in the EU28,

where the presence of women was, in the same year, 20.2% and men was 79.8%, respectively

LEGISLATION

Law no. 62/2017, of 1 August, 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 aims that from 2018 onwards it will be obliged 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 rises to 33.3% in January 2020.

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

Resolution of the Council of Ministers n.11-A/2015, March 6, promotes a more balanced representation of women and men in decision-making bodies of the publicly listed companies.

AWARENESS RAISE WITH COMPANIES

❖ In order to encourage employers in achieving gender equality, CITE has been promoting since 2000, and in partnership with the CIG - Commission for Citizenship and Gender Equality since 2009, the **Equality is Quality Award (PIQ)**. This award 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.

Since the first edition 242 organisations applied to PIQ, 18 received it and 36 received an “honourable mention”.

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

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

❖ 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 – Commission for Equality in Labour and Employment has sponsored a working partnership with private sector organisations and state-owned enterprises, to implement, monitor and disseminate concrete actions on gender equality, including on reconciliation work-family and personal life, on recruitment, on horizontal and vertical desegregation and on combating wage inequality.

This partnership has resulted in a Project **IGEN – Forum of Companies for Gender Equality** that brings together companies in the commitment to promote measures for gender equality and fight against all forms of gender based discrimination in the work.

Sixty companies have joined this Forum, pledged to undertake actions to promote gender equality in their organisations (including parental rights, maternity, paternity, work-family reconciliation, decision-making and pay gap), and established quantified targets for improvement.

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 promote.

The Forum has also four working groups: Communication and Image; Gender Equality Measures; Plenary Meetings and Publications.

The Forum 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 the obstacles found and the main achievements. They work as a community of knowledge and practice and an on-line 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.

❖ 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 of 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 the CITE's website and the media).

CITE, 06/09/2017