



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

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Case Document No. 5

University Women of Europe (UWE) v. Slovenia
Complaint No. 137/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

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REPUBLIC OF SLOVENIA
MINISTRY OF LABOUR, FAMILY
SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

Opinion of the Republic of Slovenia
as per paragraph one of Article 7 of the Additional Protocol to the European
Social Charter Providing for a System of Collective Complaints

University Women of Europe (UWE)
v. Slovenia

Complaint No. 137/2016

Ljubljana, 12 October 2017

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Introduction

1. The European Social Charter (Revised) (hereinafter: RESC) was adopted by the Council of Europe in 1996. The Republic of Slovenia signed the RESC on 11 October 1997; upon ratification, the act was adopted by the National Assembly of the Republic of Slovenia on 11 March 1999 (Official Gazette of the Republic of Slovenia [Uradni list RS] – International Treaties, No. 7/99). The Charter was ratified on 7 May 1999 and entered into force on 1 July 1999. In addition to the ratification of the RESC, the Republic of Slovenia also assumed responsibility for monitoring the commitments in the RESC as per the procedure determined by the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter: Additional Protocol).

2. The University Women of Europe (hereinafter: UWE) is an international non-governmental organisation with its headquarters in Geneva, which is on the list of organisations with consultative status to the Council of Europe.

3. On 24 August 2016, the UWE lodged a collective complaint against Slovenia under Article 5 of the Additional Protocol. As per Article 5 of the Additional Protocol, the Secretary General informed Slovenia thereof and forwarded the collective complaint to the European Committee of Social Rights (committee of independent experts; hereinafter: ECSR). In accordance with Article 6 of the Additional Protocol, the ECSR asked Slovenia on 27 September 2016 to submit its written observations on the admissibility of the collective complaint by 4 November 2016. At the request of the Republic of Slovenia, the deadline for the submission of its observations on the admissibility was extended to 15 December 2016.

4. The UWE claims that Slovenia violated Articles 1, 4 and 20 in connection with Article E of the RESC due to the existence of a pay gap between men and women and low representation of women in decision-making positions in private companies.

5. At the request of the European Committee of Social Rights as per Article 6 of the Additional Protocol, the Government of the Republic of Slovenia adopted the Opinion of the Republic of Slovenia at its 114th regular session on 14 December 2016 on the basis of Article 6 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in the procedure of establishing the admissibility of the collective complaint of the UWE against Slovenia. The opinion states that the UWE's complaint against Slovenia was unclear and unfounded, since the complainant failed to state in regard to what Slovenia had failed to ensure sufficient application of the relevant provisions of the RESC. Relevant Slovenian legislation is namely in conformity with the RESC, and statistical data reveal that the pay gap between men and women in Slovenia is among smallest in Europe and the world.

6. At its 293rd session on 4 July 2017, the European Committee of Social Rights decided that the collective complaint filed by the UWE against Slovenia was admissible.

7. The Government of the Republic of Slovenia rejects in their entirety the UWE's complaints on the alleged violation of Articles 1, 4 and 20 in connection with Article E of the RESC for the following reasons:

a) the pay gap between men and women in Slovenia is among smallest in Europe and the world, and the share of women in decision-making positions in the business sector is higher than the average in the EU countries;

b) the relevant Slovenian legislation is in conformity with the RESC's requirements. The supervisory mechanisms are established and available to everyone free of charge. The Government of the Republic of Slovenia regularly monitors the status of women and men in all fields of social life, including the pay gap and unbalanced representation of women and men in decision-making positions in the business sector, whereby it uses statistical data which are regularly updated and published, together with various analyses and research. On the basis of the established situation, the Government forms and implements measures and activities to realise gender equality in individual fields of social life;

c) The Government of the Republic of Slovenia emphasises that it received no finding from the European Committee of Social Rights between 2002 and 2016 in which violations of Articles 1, 4 or 20 of the RESC, as alleged by the UWE in the relevant collective complaint, could be established. At this point, the Government of the Republic of Slovenia highlights the complementary nature of the system of collective complaints provided in paragraph two of the Explanatory Report to the Additional Protocol (1995): "The system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter."

II Decision of the European Committee of Social Rights on the admissibility of the collective complaint

1. As a committee of independent experts in the procedure for discussing the collective complaint, the European Committee of Social Rights decided at its 293rd session on 4 July 2017 as per paragraph one of Article 7 of the Additional Protocol that the collective complaint filed by the UWE against Slovenia was admissible.

2. The Committee asked the Government of the Republic of Slovenia to provide an opinion on the content of the collective complaint filed by the UWE against Slovenia by 13 October 2017.

3. At its 293rd session on 4 July 2017, the European Committee of Social Rights decided on the admissibility of a total of fifteen collective complaints that the UWE had filed against all contracting parties to the Additional Protocol. The Committee established that all collective complaints were admissible. As per paragraph one of Article 7, all contracting parties may submit opinions in all cases of collective complaints.

III Main allegations of the UWE in the collective complaint and counter-argumentation

The UWE alleges that Slovenia violated Articles 1, 4 and 20 in connection with Article E of the RESC:

because there actually is a pay gap between men and women in Slovenia to the detriment of women in spite of the accepted international legal obligations and applicable national legislation; the UWE claims that the authorities (particularly the Human Rights Ombudsman of the Republic of Slovenia and the Labour Inspectorate of the Republic of Slovenia) responsible for monitoring the efficiency of implementing labour legislation regarding equal pay for men and women are not fulfilling their tasks and do not contribute to the efficiency of the applicable legislation;

because there are very few women in Slovenia in decision-making positions in private companies, since Slovenian legislation fails to regulate these matters.

The UWE further claims that the equality bodies, mainly the Human Rights Ombudsman of the Republic of Slovenia and the Labour Inspectorate of the Republic of Slovenia, fail to appropriately perform their tasks of monitoring the efficiency of implementing labour legislation regarding equal pay for men and women.

1. Regulation and supervisory mechanisms

The **Constitution of the Republic of Slovenia** (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 33/91-1, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 - UZ50, 68/06 - UZ121, 140, 143, 47/13 - UZ148, 47/13 - UZ90, 97, 99 and 75/16 - UZ70a) stipulates in paragraph one of Article 14 that everyone is guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance. It is clear from the aforementioned that the principle of equality includes the prohibition

of unequal treatment or discrimination. In Article 159, the Constitution of the Republic of Slovenia stipulates that "in order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of the ombudsman for the rights of citizens shall be established by law".

The **Human Rights Ombudsman of the Republic of Slovenia** was established with the Human Rights Ombudsman Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 71/93, 15/94 – corr., 56/02 – ZJU and 109/12) (hereinafter: Ombudsman), and its competences and powers were determined. Anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of a state authority, local self-government authority or a bearer of public authority may instigate a complaint procedure with the Ombudsman. Complaints may also be submitted by another person on behalf of an injured party (which is subject to the prior consent of the injured party). The Ombudsman may also initiate a procedure on its own accord. All procedures conducted by the Ombudsman are informal and free-of-charge for the parties involved. Complaints instigating a procedure are usually submitted in written form. The formality or assistance of a lawyer are not needed to submit a complaint.

The Government of the Republic of Slovenia highlights information obtained from the Ombudsman that "on the basis of complaints received for instigating a procedure, the Ombudsman did not find that the regulation of protection against discrimination in the Republic of Slovenia incorporated any legal or actual limitations which would actually render the arrangement insufficient."¹

The **Employment Relationship Act** (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16 and 15/17 – Decision of the Constitutional Court; hereinafter: ZDR-1), similarly to its predecessor (ZDR), explicitly determines equal treatment and prohibits (direct and indirect) discrimination (also) on the basis of gender (Article 6), and imposes damage liability on an employer (according to the general rules of civil law) found to violate the prohibition of discrimination. Both acts (ZDR and ZDR-1) also include a provision on the reversed burden of proof, which states that in the event of a dispute, a candidate or worker cites facts that give grounds to suspect that the prohibition of discrimination has been violated, the employer must demonstrate that in the case in question the principle of equal treatment and the prohibition of discrimination was not violated.

As per the ZDR-1, employers must ensure equal treatment irrespective of the personal circumstance to both candidates and workers during employment and regarding the termination of an employment contract. In order to ensure equal pay for women and men, the ZDR-1 stipulates in Article 133 that the employer is obliged to pay workers equal amounts for equal work and for work of equal value, regardless of the worker's gender. Provisions in employment contracts and collective agreements or employers' general acts which are contrary to the foregoing are invalid.

The provision on equal pay for women and men is closely linked to Article 6 of the ZDR-1, which generally regulates the prohibition of discrimination and also prohibits direct and indirect discrimination in regard to wages. Since the provision of Article 133 refers to women and men, the right to equal pay for equal work and for work of equal value irrespective of gender may be enforced by women and men. While observing paragraph one of Article 126 of the ZDR-1, the term pay includes remuneration for work, which includes salaries and other types of remuneration, i.e. anything that an employer is obliged to pay to the worker on the basis of their employment (basic salary and all other direct and indirect remuneration in cash or in kind).

Violations of the provision ensuring the principle of equal pay are sanctioned by Article 6 of the ZDR-1, because a violation of the right to equal pay is also a violation of the general prohibition of discrimination. As per Point 1 of Article 217 of the ZDR-1, an employer (legal entity, sole proprietor or self-employed person) is subject to a fine of between EUR 3,000 and EUR 20,000 if a job seeker or a worker is put in an unequal position, or EUR 1,500 to EUR 8,000 for small employers and EUR 450 to 1,200 for private persons. A fine of between EUR 450 and EUR 2,000 is imposed on the responsible person of an employer who is a legal entity or responsible person in a state authority or local community.

¹ Full response of the Ombudsman to the UWE's claims is in the appendix.

In the event of a violation of the prohibition of discrimination, Article 8 of the ZDR-1 explicitly determines the employer's liability for compensation under the general rules of civil law. This provision defines in more detail the general rule of the employer's liability for damages from Article 179.

If a worker is of the opinion that the employer has violated the principle of equal pay arising from the employment relationship, they have the right to request in writing that the employer eliminate the violation and fulfil their obligations as per the procedure for enforcing rights prescribed in Article 200 of the ZDR-1. If the employer fails to fulfil their obligations or fails to eliminate the violation within eight working days of being served with the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the employer to fulfil their obligations.

Thus a worker who believes they have been discriminated against regarding pay has the right to judicial protection by means of a lawsuit before the competent labour court. The provision on the reversed burden of proof (paragraph six of Article 6 of the ZDR-1) determines that an employer must demonstrate that the principle of equal treatment or the prohibition of discrimination is not violated if the worker provides facts in the dispute which justify the assumption that the prohibition of discrimination was so violated.

Labour disputes take place before labour courts, which in comparison to other courts have certain features adjusted to the content of disputes, i.e. involving a labour relationship, which is usually a relationship between a weaker (worker) and a stronger party (employer). Unlike the general rules of judicial proceedings, the **Labour and Social Courts Act** (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 2/04, 10/04 – corr., 45/08 – ZArbit, 45/08 – ZPP-D, 47/10 – Decision of the Constitutional Court, 43/12 – Decision of the Constitutional Court and 10/17 – ZPP-E; hereinafter: ZDSS-1) defines special rules, which observe the principle of in favorem of the worker and aim at a prompt hearing with no delays:

- a case may be resolved without a main hearing if the actual situation is not disputable and both parties have resigned before the hearing in writing;
- when preparing for the main hearing, the court may order the parties to reply to certain questions, supplement or further elaborate on their previous applications within a certain deadline, and submit documentation;
- proceedings may not be stayed;
- if the defendant fails to attend a hearing, the court issues its decision on the basis of recognition even if the defendant responded to the lawsuit;
- unlike in contentious proceedings, evidence in labour proceedings is produced ex officio (inquisitorial principle);
- representatives of unions/employers' associations may also act as workers' authorised representatives if they are appointed for such representation and passed the state bar examination;
- regarding incomprehensible, incomplete and lay applications, the court instructs the worker on how to eliminate deficiencies and informs them of the consequences if they fail to act in accordance with the request.

The ZDSS-1 has special rules concerning costs, which facilitate the situation of the plaintiff. The court may decide that the employer must cover all the costs of the production of evidence even if the worker was not fully successful in the dispute and no particular costs were incurred. If the worker participates in the proceedings without an authorised representative or if they are represented by a union representative and not fully successful in the dispute, the court may decide that each party should cover their own costs of representation.

Access to the court is also enabled to socially disadvantaged workers through **free legal aid**. A person who in regard to their financial situation and the financial situation of their family cannot cover the costs of judicial proceedings or costs of obtaining legal aid without affecting their social situation and social situation of their family is entitled to free legal aid. It is understood that the social situation of the applicant and their family is endangered due to the costs of judicial proceedings or costs of obtaining legal aid if the monthly income of the applicant (their own income) or the average monthly income per family member (family income) does not exceed twice the basic amount of minimum income determined by the act governing social security services. Free legal aid is implemented at district courts, labour (and social) courts and the administrative court as per the Legal Aid Act (Official Gazette

of the Republic of Slovenia [Uradni list RS], Nos. 96/04 – official consolidated text, 23/08, 15/14 – Decision of the Constitutional Court and 19/15).

The Government of the Republic of Slovenia is of the opinion that judicial protection for workers who are allegedly discriminated against regarding payment is suitably provided for by law, since labour courts are accessible to everyone, including socially disadvantaged individuals, and the rules of operations of labour courts comply with the principle of in favorem of the worker. It is not possible to establish from case law that the issue of unequal pay for women and men for equal work and for work of equal value is topical in Slovenia, since the courts did not discuss any cases between 2007 and 2016 which could have been instigated on the grounds of gender discrimination regarding payment for equal work and for work of equal value.

When enforcing legal protection, workers who believe they have been discriminated against regarding pay may independently and simultaneously also forward a complaint to the suitable inspection authority. Implementation of the ZDR-1 is supervised by the Labour Inspectorate of the Republic of Slovenia (hereinafter: IRSD). The IRSD performs supervision ex officio (regular inspections, targeted actions) and on the basis of reports. An employee may report violations of labour legislation to the IRSD by e-mail, regular post, telephone, or in person at the competent regional unit where the employer's headquarters is registered. It must be emphasised that the formal requirements of reports are not determined in advance, and they may also be anonymous. The IRSD discusses all reports. An electronic form for submitting a report via the IRSD's website or the e-government portal is also available. The Government of the Republic of Slovenia believes that various methods of reporting a violation and procedures conducted by the IRSD that are free of charge for the reporter enable anyone who so wishes to exercise their right with the IRSD's help.

The Government of the Republic of Slovenia emphasises that, regarding the content of reports received by the IRSD in the past five years, it cannot be concluded that the issue of unequal pay for women and men has even arisen in practice, let alone be particularly topical. Namely, in the same period, the IRSD established no violations of Article 133 of the ZDR-1 (or of the same Article of the Employment Relationships Act applicable before 2013 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 42/02 with amendments)), which stipulates that the employer is obliged to provide equal pay for equal work and for work of equal value to workers regardless of their gender. The IRSD also pays attention to possible violations which are the subject of the UWE's complaint within the framework of supervising the implementation of the prohibition of discrimination within employment relationships, which is determined in more detail in paragraphs one, two and three of Article 6 of the ZDR-1. According to the IRSD's data, no violation of the prohibition of discrimination regarding unequal pay for work for men and women has been recorded in the last three years.

Since parenthood, particularly motherhood, is one of the obstacles to the balanced representation of women and men in decision-making positions, the articles referring to parental protection and reconciliation of family and professional life are also important. Thus, for example, the Employment Relationship Act and the Parental Protection and Family Benefits Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 26/14 and 90/15) regulate the rights of male and female workers who are parents, part-time work due to parenthood, parental leave and benefits etc.

The **Protection Against Discrimination Act** (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 33/16) is a framework act prohibiting discrimination on the basis of any personal circumstance, i.e. including gender. The Act defines – inter alia – the tasks and powers of the **Advocate of the Principle of Equality** as an independent state authority discussing cases of alleged discrimination.

The tasks of the Advocate also include the following (Article 21):

- providing independent assistance to persons subject to discrimination when enforcing their rights regarding protection against discrimination in the form of counselling and legal assistance for clients in other administrative and judicial proceedings related to discrimination;
- participating in judicial proceedings involving discrimination;
- conducting tasks of supervisory inspection on the basis of complaints about the observance of provisions;
- raising the awareness of the general public on discrimination and measures to prevent it;
- monitoring the general situation in the Republic of Slovenia in the field of protection against discrimination and the situation of people with certain personal circumstances;

proposing the adoption of special measures to improve the situation of people who are in a less favourable position due to certain personal circumstances.

The complaint may be submitted to the Advocate by any person who believes they have suffered discrimination. No formal requirements are determined for reports; a complaint may be filed in writing or verbally as recorded in minutes. A simple web form is also available to reporters of alleged discrimination. The procedures which the Advocate conducts are informal, confidential and free-of-charge for the parties. The Advocate may also consider a case of discrimination ex officio upon learning about the existence of discrimination on the basis of an anonymous complaint, complaint from a third party or in any other way. Following the receipt of a complaint, the Advocate verifies allegations at the alleged offender or other persons, from whom the Advocate may also request the submission of information and documents, which, as per the principle of proportionality, are needed to consider an individual case in order to determine the existence of discrimination. In the case of victimisation, the Advocate may call on the offender to protect from victimisation the person subject to discrimination or the person helping the person being discriminated against, or eliminate the consequences of victimisation by means of appropriate measures.

It was not possible to discern from the data on the work of the Advocate of the Principle of Equality that the issue of unequal pay for women and men for equal work and for work of equal value was pressing in Slovenia, since the Advocate received no complaints between 2012 and 2016 which referred to discrimination on the basis of gender regarding payment for equal work and for work of equal value, despite the fact that the Advocate is accessible to everyone and that complaints are examined free of charge.

The framework act governing the realisation of gender equality is the **Equal Opportunities for Women and Men Act** (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 59/02, 61/07 -ZUNEO-A and 33/16 – ZVarD). According to Article 7 of the Act, unbalanced representation of both genders occurs if the representation of one gender in a certain field of social life or part thereof is below 40 per cent. The Act also provides the basis for special measures to remove objective barriers to balance the representation of genders or unequal position of persons of one gender or give special advantages in the sense of incentives to the less represented gender or gender in an unequal position, which must be founded and proportionate as per the purpose of the special measure.

On the basis of Article 15 of the Equal Opportunities for Women and Men Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 59/02, 61/07 – ZUNEO-A and 33/16 – ZVarD), the Government prepares and submits to the National Assembly for adoption a motion for a resolution on the national programme for equal opportunities for women and men, which is based on the proposals of ministries, local communities, social partners, non-governmental organisations and other civil society organisations, and individual experts. The resolution on the national programme for equal opportunities for women and men determines objectives, measures and key actors, and is implemented on the basis of two-year periodical plans.

One of the objectives defined in the **2005-2013 Resolution on the National Programme for Equal Opportunities for Women and Men** (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 100/05) was to reduce vertical and horizontal segregation and differences in pay for women and men. Various activities were executed to attain the objective of a horizontal policy on equal opportunities for both genders within the active employment policy and the encouragement of women and men to obtain knowledge and employment in fields where men or women are in minority. In addition to the defined objective of reducing vertical and horizontal segregation and differences in pay for women and men, the Resolution also defined two additional objectives: to facilitate the reconciliation of work and private life and to improve public and support services to enable a reconciliation of work and family life, which have contributed to improved harmonising of work and private life and the family obligations of employed women and men.

The **2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men** (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 84/15) also defines the objectives which contribute to reducing the difference in pay for women and men and to enhancing the share of women in decision-making positions in the business sector.

The objective of increasing the share of women and men in professions and activities where they are in a minority was intended to contribute to reducing the difference in pay for women and men. Its realisation anticipates two measures: activities to eliminate gender stereotypes when young people are deciding on an occupation and implementation of projects and programmes to encourage women and men to choose non-traditional occupations and employment, particularly in high-potential branches, and the incorporation of the gender aspect when planning, implementing and evaluating programmes and projects that reduce segregation in a way that they derive from the differences in the position of women and men in individual branches and occupational groups and form programmes and projects which promote gender equality and reduce inequality between women and men.

The objective of increasing the share of women in executive and managerial positions in the business sector was defined in the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men for the balanced representation of women and men in the business sector. The measures to attain the objective include the enactment of legislation which promotes the balanced representation of women and men in decision-making positions in companies, the implementation of programmes and projects encouraging women to take the highest positions in companies, and raising awareness about the importance of balanced representation in the highest positions in the business sector. It must also be noted that the Companies Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 65/09 – official consolidated text, 33/11, 91/11, 32/12, 57/12, 44/13 – Decision of the Constitutional Court, 82/13, 55/15 and 15/17) determines that large companies which are subject to auditing must include corporate governance statements in their business reports. The statement must – inter alia – include the description of the diversity policy implemented regarding representation in management and supervisory bodies of companies from the viewpoint of gender and other aspects, e.g. age, education, professional experience, provision of objectives, the manner of implementation and results obtained from the diversity policy in the reporting period. If a company does not have a diversity policy, this is explained in the corporate governance statement.

Since one of the reasons for the pay gap between women and men is the imbalance between work and private life because women still do most of the family work, i.e. housework, care for children and elderly family members, the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men includes two objectives: to increase the share of fathers who take parental leave and sick leave to care for family members and work part-time due to parenting and to eliminate stereotypes about gender roles in society, family and relationships and to facilitate a more equal division of labour regarding care and housework.

SUMMARY

It is evident from the foregoing that the relevant legislation is in conformity with the requirements of the RESC's provisions, and that the supervisory mechanisms responsible for monitoring the legislation and determining violations in practice are functioning in Slovenia. It must be emphasised that all supervisory mechanisms are available to everyone free of charge and in a simple manner. The Government of the Republic of Slovenia highlights that it was not possible to ascertain from the practice of the IRSD, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts that the issue of unequal pay for women and men for equal work and for work of equal value was pressing in the Republic of Slovenia.

2. Facts

2.1 Pay gap between men and women

Irrespective of the legally guaranteed right to equal pay for women and men, a pay gap between women and men exists in the Republic of Slovenia, as in other countries. According to Eurostat, the relative difference in average gross hourly earnings of women and men was 8.1 per cent in 2015. This was one of the smallest pay gaps compared to that in other countries. The data for 2015 reveal that the average pay gap in the EU was 16.4 per cent.

In spite of the relatively small pay gap, the Republic of Slovenia dedicates special attention to eliminating differences in wages for women and men. Various approaches and measures are in force to eliminate segregation in the labour market, abolish stereotypes, promote the reconciliation of professional and private or family life and encourage a culture of equality in the workplace.

Since understanding the situation is a prerequisite for taking measures, it is important to have suitable statistical data. The Statistical Office of the Republic of Slovenia regularly displays data on wages by gender which are collected by the Agency of the Republic of Slovenia for Public Legal Records and Related Services. The data on wages are presented by gender with respect to different variables (by activity, occupational group, education level, age, employment type etc.) on the basis of monthly data collection. The Agency of the Republic of Slovenia for Public Legal Records and Related Services also undertakes statistical research every four years on wage structure for the needs of the Statistical Office of the Republic of Slovenia; the purpose is to obtain internationally comparable data for Slovenian wage and employment policy planners on the wage structure in the Slovenian labour market and show the impact of individual wage components on the total amount of the wage. The data collected and presented for 2014 reveal that average gross earnings for women was EUR 1,478.34 and for men EUR 1,566.61 (in October). On average, men earned more than women in all age classes, except in the age class of 60 years and above.

Table 1: Average gross wages per employed person (according to the research on wage structure) by gender and age (October 2014)

	Men (EUR)	Women (EUR)	Wage gap (%)
Age -total	1,556.61	1,478.38	5.02
Under 20 years	945.91	901.14	4.73
20-29 years	1,176.30	1,084.87	7.77
30-39 years	1,503.99	1,372.75	8.73
40-49 years	1,679.37	1,553.49	7.49
50-59 years	1,687.07	1,617.86	4.10
Over 60 years	2,300.59	2,424.46	-5.38

Source: Statistical Office of the Republic of Slovenia (its own calculation of the pay gap)

There are several reasons for the pay gap. Women and men frequently do different work and are employed in different sectors. They receive different treatment in workplaces, i.e. regarding professional promotion and training. Customs and traditional understandings of gender affect people's decisions when choosing occupations and employment. Furthermore, women bear a greater burden of unpaid work and children care etc. One of the reasons that the average monthly gross earnings for women are lower than the average monthly gross earnings for men is also that women work fewer hours per month. In October 2014, for example, women worked an average of four hours less than men. If gross hourly wages for men and women are compared, it is evident that the pay gap is smaller. In October 2014, men's gross hourly wage was EUR 8.65 and women's gross hourly wage was EUR 8.35; thus the pay gap was 3.46 per cent.

If average women's and men's gross hourly wages according to occupational group are compared, it is obvious that wages are higher for men in all occupational groups except for officials.

Table 2: Average gross wages per hour paid (according to the research on wage structure) by gender and occupation (October 2014)

	Men (EUR)	Women (EUR)	Wage gap (%)
Occupation -total	8.65	8.35	3.46
Armed forces occupations	8.68	8.07	7.03
Legislators, senior officials, managers	15.39	14.44	6.17
Experts	13.04	11.39	12.65
Technicians, other expert assistants	9.97	8.93	10.43
Officials	7.48	7.52	-0.53
Service occupations, salespeople	6.66	5.60	15.91
Farmers, foresters, fisherpersons, hunters	6.28	5.77	8.12
Craft and related trades workers	6.73	5.63	16.34

Machine operators, industrial workers, article producers, assembly line workers	6.91	5.63	18.52
Elementary occupations	5.73	4.88	14.83

Source: Statistical Office of the Republic of Slovenia (its own calculation of the pay gap)

A comparison of average women's and men's gross hourly wages with respect to educational attainment also reveals that men have a higher average gross hourly wage.

Table 3: Average gross wages per hour paid (according to the research on wage structure) by gender and education (October 2014)

	Men (EUR)	Women (EUR)	Wage gap (%)
Education -total	8.65	8.35	3.46
Primary school or below	6.11	5.18	15.22
Secondary school	7.30	6.58	9.86
Higher or high education	13.29	11.18	15.88

Source: Statistical Office of the Republic of Slovenia (its own calculation of the pay gap)

On average, wages in the public sector are higher, and more women than men are employed in this sector. In 2016, the share of women in the public sector was 61.62 per cent. The average gross wage for women in the public sector was EUR 1,672.26 in October 2014 and EUR 1,898.55 for men, while women in the private sector earned EUR 1,333.50 and men EUR 1,463.28. In the public sector, the pay gap was 11.92 per cent, and 8.87 per cent in the private sector.

In addition to the regular monitoring and publishing of data on the pay gap, studies and analyses on the gender pay gap were undertaken which determined the situation in the field of women's and men's wages in more detail, also at the level of companies. In 2012, the study 'Gender Inequality in Slovenia, 1993-2007: An economic sociology perspective on pay differences' (Neenakost po spolu v Sloveniji od 1993 do 2007: Razlike v plaah v perspektivi ekonomske sociologije), was implemented, which analysed differences in wages by gender within a period of fifteen years (1993-2007) on the basis of combining data from the employers' registers and the statistical register of the active population with data on income tax from the Statistical Office of the Republic of Slovenia. In 2013, the Association of Free Trade Unions of Slovenia in cooperation with the Women's Lobby of Slovenia conducted the study, 'Equal Pay for Equal Work and the Gender Pay Gap' (Enako placilo za enako delo in placna vrzel med spoloma), which included an empirical analysis of the situation in companies. Pay gaps for individual workplaces were calculated for selected companies. Both studies help determine the reasons and understanding of gender inequality and pay gap and in the formation of policies that contribute to reducing the differences.

2.2 Women in decision-making positions in private companies

Balanced representation of women and men in decision-making positions is one of the eight priorities defined in the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men (more on this in Point 1). The data reveal that the share of women in decision-making positions in the business sector in Slovenia is low, but still higher than the average in EU countries (chairs and board members).

Companies listed on the stock exchange		Chairs		Board members		Employee representatives	
Situation in October 2016	Number of organisations	F (%)	M (%)	F (%)	M (%)	F (%)	M (%)
Slovenia	20	15	85	25	75	27	73
EU-28	614	8	92	24	76	29	71

Source: (European Commission Database)

Despite the legislation prohibiting unequal treatment on the basis of gender, women remain under-represented in decision-making positions. The Ministry of Labour, Family, Social Affairs and Equal Opportunities (hereinafter: MDDSZ) sought to examine the situation and determine the key factors for women's under-representation, so it implemented or contracted out two major research studies in recent years on the issue of the balanced representation of women and men in decision-making positions in the business sector. Both were implemented within the IncludeAll project co-financed by the European Union from funds of the PROGRESS programme; the first research was done by the Faculty of Social Sciences of the University of Ljubljana; it examined the differences in career paths of female and male managers and their views on male and female equality in the business sector. The second study was conducted by the Equal Opportunities Sector at the MDDSZ, which examined the importance of transparent staffing for achieving a balanced representation of women and men in decision-making positions. Both studies highlighted those fields in which the situation is not yet satisfactory, e.g. female managers are overburdened with care duties; certain social and organisational factors hinder the promotion of women to the highest positions (social stereotypes regarding the role and characteristics of genders; importance of subjective and informal criteria in staffing procedures; personal influence of the highest management on staffing choices etc.); men predominate in the highest positions in the private sector, whereas the situation is more balanced in the public sector; few organisations have taken measures to enhance the share of women in management positions; staffing procedures for management posts in the public sector are for the most part more transparent than in the private sector. On the basis of the findings of the aforementioned studies, informative material was drafted which was used to raise the awareness of employers and professional associations of the importance of balanced representation and provided concrete instructions on possible measures for attaining balanced representation.

Questions regarding equal opportunities for women and men in professional life, including issues concerning women in management positions, were also incorporated into the research of the project, Let's Balance Gender Power Relations, which was co-financed from the EEA Financial Mechanism Programme and the Norwegian Financial Mechanism Programme. This research, implemented by the German SINUS Institute, revealed that, in Slovenia, the idea that both partners in a marriage would work is self-evident to both genders; that an equal distribution of household chores was not understood as an element of an equal partnership; that care for children was still primarily the task of women, although young people in particular believed that both partners should share this task; that men should relieve women of household chores and child care and assume their share of work; that the employers' lack of understanding is an obstacle to men assuming more domestic obligations; that women are less likely to be promoted to management positions than men, and that women in leading positions must make many sacrifices.

3. Activities implemented and planned

For progress and the realisation of gender equality in practice, including the provision of equal pay for women and men and the balanced representation of women and men in decision-making positions in the business sector, various measures and activities are being implemented by the Government of the Republic of Slovenia, individual ministries and other important stakeholders. In addition to previously mentioned measures and activities within the 2015-2020 Resolution on the National Programme for Equal Opportunities for Women and Men (more on this in Point 1) and research studies mentioned in the previous chapter, other activities are or have been executed which have contributed to equalising wages and to balanced representation in decision-making positions.

In order to attain a balanced share of women and men in decision-making positions in the business sector and enhance women's economic independence, the MDDSZ has been implementing numerous projects and activities in the last five years.

A conference, 'The Difference between Legislation and Practice: Role of Management in Forming Non-discriminatory Policies', was held in 2010, which brought together both male and female managers employed in HR and also many other experts dealing with diversity and the role of management in forming non-discriminatory policies. There was also a panel discussion on women in decision-making positions (2011), where Norwegian and Slovenian best practices were presented and the debate included measures needed to improve the situation.

Some 800 of the largest companies in Slovenia were invited to adopt measures to provide balanced representation of both genders in decision-making positions in the business sector (2011), and companies listed on the stock exchange were asked to sign a statement prepared by the European Commission on the greater representation of women on management boards of European companies.

Research on balanced gender representation in decision-making positions in the business sector in Slovenia implemented in 2011 by the Government Office for Equal Opportunities (now the Equal Opportunities Sector at the MDDSZ) revealed that one of the important causes of women's under-representation in decision-making positions was gender stereotyping, due to which men are thought to be more suitable to lead than women. For this reason, the Include.All project was implemented and co-financed by the European Union from funds of the PROGRESS programme; the project was conducted by the MDDSZ in partnership with the Managers' Association of Slovenia and the Commission for the Prevention of Corruption. The main objective of the project was greater representation of women in decision-making positions in the business sector, to which the project tried to contribute by improving knowledge about women and men in executive and managerial positions, countering stereotypes about women in management positions, promoting a business case for gender equality regarding decision-making in the business sector, and encouraging the private sector to increase female participation at all decision-making levels. The following activities were implemented between 2013 and 2015: research on the career paths of female and male managers; research on the impact of transparent staffing on female representation in decision-making positions in the business sector; expert forums and international conferences on the topic of gender stereotypes, the aspect of gender, corruption and transparency when employing and female management; a media campaign (promotional videos, activities in social media); informing of employers; a competence centre for mentoring female managers was established; a list, 'Incorporated – a list of women with competences, ambitions and vision' was drafted; workshops for companies were held; materials for raising awareness and education purposes were drafted; international cooperation and exchange of best practice were established, which also included an extensive media campaign, awareness raising among the professional and lay public on the relevant topic, detailed research and numerous other activities for employers.

One of the topics of the project, Let's Balance Gender Power Relations, financed from the EEA Financial Mechanism Programme and the Norwegian Financial Mechanism Programme and implemented by the MDDSZ between 2013 and 2016, was balanced gender representation in the business sector. In addition to many panel discussions, conferences, exchanges of best practice and publications, an extensive media campaign was implemented which addressed gender stereotypes and enhanced awareness on the importance of balanced gender power relations and gender equality in society.

In order to realise balanced gender representation in decision-making positions in the business sector, the MDDSZ established an expert working group in 2016, which prepared an analysis of the situation and bases for legally regulating this matter. The analysis of the situation revealed that because of the generally small management boards in Slovenia (2.6 members on average), it would be sensible to adopt measures for balanced representation in decision-making positions for executive and non-executive posts together. However, the aforementioned leads to many problems in practice, because in accordance with the Slovenian legislation shareholders are not permitted to agree in advance on appointments to supervisory boards, since they would thus lose their voting rights. Varying methods of appointing members to supervisory and management bodies (from elections to appointments according to function) present an additional problem. Only some 50 companies in Slovenia could (regarding their size) be considered subject to the statutory regulation of a minimum share of women and men in decision-making positions, of which some have only one-member decision-making bodies.

The activity currently underway encompasses the preparation of guidelines for achieving gender balance in decision-making positions. In cooperation with Slovenian Sovereign Holding, which manages financial assets in its ownership and in the ownership of the Republic of Slovenia, the MDDSZ is preparing guidelines for companies on how to optimally incorporate the aspect of gender equality into company management and efficiently eliminate obstacles to balanced gender representation in decision-making positions.

Various activities are also being implemented to ensure equal pay for women and men. For example, the realisation of equal pay is encouraged by the annual observation of European Equal Pay Day. On this day, the MDDSZ draws the attention of the expert and broader public to the difference in the average pay of women and men in Slovenia and the European Union.

A handbook on the realisation of the right to equal pay was issued; it was prepared by the Association of Free Trade Unions of Slovenia in cooperation with the Women's Lobby of Slovenia on the basis of the study, 'Equal Pay for Equal Work and the Gender pay gap' (more on this in Point 2.1). The handbook provides examples of the gender pay gap in Slovenia, including possible solutions and instructions to employees on how to take action.

Since one of the reasons for the existing pay gap or one of the obstacles to balanced gender representation in decision-making positions in the business sector is the unbalanced distribution of care and household chores between partners (as evident from the above-mentioned research), great attention was also dedicated to this matter. Between 2016 and 2017, in cooperation with many local institutions and the Icelandic Centre for Gender Equality, the MDDSZ has been implementing the Active.Everyone project, which addresses this issue, with an emphasis on active fatherhood. The project comprehensively tackles the entire array of gender stereotypes which directly or indirectly hinder progress in this field. Thus, many activities for children in kindergartens and schools, parents, expert workers in local self-government and social services, health care, education and schooling, political decision-makers, employers and trade unions have been and will be implemented during the course of this project. These activities are supported by guidelines on including the aspect of gender equality in their respective fields. Promotional videos were made, including a documentary film presenting social changes concerning fatherhood and using positive examples to encourage men to be active fathers.

In addition to the above, the MDDSZ called for tenders aimed at the reconciliation of private and professional life, with an emphasis on active fatherhood, in its regular call for co-financing NGO projects in 2017. Thus the Ministry is co-financing three projects in 2017 that deal with this issue.

SUMMARY

It is evident from the actual situation that a gender pay gap exists in Slovenia, but it is among the smallest ones in both Europe and globally (the gap in gross hourly earnings of women and men was 3.46 per cent in 2014), and the share of women in decision-making positions in the business sector in Slovenia is higher than the average in EU countries. The Government of the Republic of Slovenia strives to achieve progress and the realisation of gender equality in practice, including the provision of equal pay for women and men and balanced gender representation in decision-making positions in the business sector, and has been implementing various measures and activities for this purpose. Several analyses and research studies were implemented, which additionally highlighted the issue and reasons for the existence of the pay gap and unbalanced gender representation in decision-making positions, and were used in informing additional measures and activities described in Chapter 3, whose objective was the realisation of gender equality in practice.

IV Costs of proceedings

In the collective complaint against the Republic of Slovenia, the UWE requests the reimbursement of costs of the proceedings in the amount of EUR 10,000, excluding VAT, which the ECSR was to impose on the Republic of Slovenia in its final decision.

The Government of the Republic of Slovenia emphasises that the applicable Additional Protocol has no legal basis for reimbursing the costs of collective complaints procedure, which was determined also by the Committee of Ministers in its resolution on collective complaint no. 100/2013. The Government of the Republic of Slovenia stresses that the mechanism of collective complaints as governed by the Additional Protocol is by no means a judicial procedure, and the ECSR is not a judicial authority; similarly, the parties to the collective complaint procedure cannot be understood as parties to judicial proceedings, which would imply the need to determine the costs of proceedings.

The Government of the Republic of Slovenia believes that by deciding on the costs of proceedings, the ECSR would act outside its powers granted as per the Additional Protocol, and the Government thus suggests to the ECSR that it clearly state the absence of a legal basis for reimbursing the costs of proceedings in its final decision.

V Conclusion

The Government of the Republic of Slovenia rejects in its entirety the UWE's complaints on the alleged violation of Articles 1, 4 and 20 in connection with Article E of the RESC for the following reasons:

- a) the pay gap between men and women in Slovenia is among smallest in Europe and the world, and the share of women in decision-making positions in the business sector is higher than the average in the EU countries;
- b) the relevant Slovenian legislation is in conformity with the requirements of the RESC's provisions; supervisory mechanisms are in place in the Republic of Slovenia and are available to everyone free of charge and in a simple manner. The Government of the Republic of Slovenia highlights that it was not possible to ascertain from the practice of the IRSD, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts whether the issue of unequal pay for women and men for equal work and for work of equal value was topical in the Republic of Slovenia;
- c) the Government of the Republic of Slovenia regularly monitors the status of women and men in all fields of social life, including the pay gap and unbalanced gender representation in decision-making positions in the business sector, whereby it uses statistical data which are regularly updated and published, together with different analyses and research studies. On the basis of the established situation, the Government forms and implements measures and activities to realise gender equality in individual fields of social life;
- d) The Government of the Republic of Slovenia emphasises that it received no finding from the European Committee of Social Rights between 2002 and 2016 in which violations of Articles 1, 4 or 20 of the RESC, as alleged by the UWE in the relevant collective complaint, could be established. At this point, the Government of the Republic of Slovenia highlights the complementary nature of the system of collective complaints, as provided in paragraph two of the Explanatory Report to the Additional Protocol (1995): "The system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter."

The Government of the Republic of Slovenia is confident that the existing legislative framework, findings from the practice of the Labour Inspectorate of the Republic of Slovenia, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts, including implemented and planned activities of the Government of the Republic of Slovenia aimed at realising gender equality in practice cannot constitute violations of Articles 1, 4 and 20 in connection with Article E of the RESC, and it thus proposes that the European Committee of Social Rights declare the collective complaint of the UWE against the Republic of Slovenia unfounded.


Andraž Bobovnik


REPUBLICA SLOVENIJA
MINISTRSTVO ZA DELO, DRUŽINO, SOCIALNE
ZADEVE IN ENAKE MOŽNOSTI
Ljubljana

HEAD OF THE DELEGATION ACTING AS THE
AGENT FOR THE GOVERNMENT OF
SLOVENIA

Ljubljana, 13 October 2017

Appendix: Response of the Human Rights Ombudsman of the Republic of Slovenia to the UWE's allegations

The Ombudsman determined that it was referred to only once in the UWE's complaint of 15 November 2016 (Case document No. 1), i.e. on page 18 in sub-chapter **4.4. Equality monitoring bodies**, where it is stated: "Ombudsman: Equality between women and men does not appear to be one of the human rights ombudsman's major concerns. He/she is mainly involved with the public sector, with the private sector falling more within the domain of the Advocate of the Principle of Equality." The Labour Inspectorate of the Republic of Slovenia is also particularly highlighted in the relevant sub-chapter, followed by three paragraphs describing 'such proceedings', whereby it is not evident to which proceedings the complaint refers, or if the proceedings conducted by the Ombudsman are meant in particular (this was apparently the understanding of the European Committee of Social Rights, since the Labour Inspectorate and the Ombudsman were mentioned in points 1 and 7 of its decision on the admissibility of the UWE's complaint against the Republic of Slovenia of 4 July 2017). As far as it is possible to understand, the complainant also problematises the "cost of such proceedings; the energy they require; the pressure they place women under, and that there are so many difficulties that a reasonable lawyer would not drag a woman employee into such proceedings unless her contract had already been terminated, or was in the process of being terminated. A final obstacle is the limitation period that applies to pay disputes, which can be somewhat short." These allegations are not only entirely general, but cannot be founded, at least regarding proceedings implemented by the Ombudsman.

Firstly, it must be emphasised that the Constitution of the Republic of Slovenia determines explicitly in Article 159 that the Ombudsman is established by law to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority. Therefore, according to the Human Rights Ombudsman Act (ZVarCP), **the Ombudsman has no powers in relation to any other legal entities, e.g. private companies** (Article 23 also states explicitly: "According to the law, the Ombudsman has certain powers with regard to all state authorities, local self-government bodies and holders of public authority."). The ZVarCP also stipulates that **proceedings conducted by the Ombudsman are "informal and free of charge for clients"** (paragraph three of Article 9), and also that **"formality or the assistance of a lawyer are not needed to submit a complaint" or initiate proceedings by the Ombudsman** (paragraph two of Article 27). Thus, as per paragraph one of Article 26, **a complaint to instigate proceedings may be addressed to the Ombudsman by "anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of a state authority, local self-government authority or a bearer of public authority"**. According to paragraph three of the same Article, **such a complaint may be "filed by another person on behalf of the affected person"** (in which case, the affected person's consent is needed to instigate proceedings). The Ombudsman believes that none of the above legal provisions individually or in connection with others could have such a dissuasive effect on any reasonable person as described by the complainant (see the paragraph above). Regarding the energy invested and pressure mentioned as obstacles by the complainant in connection with proceedings, the Ombudsman believes that the legal provisions requiring that all complaints addressed to the Ombudsman must be signed and furnished with a complainant's personal information and must include the circumstances, facts and evidence on which they are based, and that the complaint must also state whether any legal remedies have already been resorted to in the case (paragraph one of Article 27), and that the Ombudsman may also terminate procedures if the complainant unreasonably fails to cooperate in the proceedings or if it is obvious from their actions that they are not interested in continuing the proceedings (Article 37) are not exaggerated, i.e. they do not have an unreasonably restrictive effect on a person seeking the protection of rights at the Ombudsman.

On the basis of complaints received for the purpose of instigating a procedure, **the Ombudsman has not find that the regulation of protection against discrimination in the Republic of Slovenia incorporated any legal or actual limitations which would actually render the arrangement insufficient.** To this end, and at the level suited to the general nature of complainant's allegations, the Ombudsman wishes to particularly highlight that the Employment Relationship Act (ZDR-1) in force since 2013, similarly to its predecessor (ZDR), determines equal treatment and prohibits (direct and indirect) discrimination (also) on the basis of gender (Article 6), and imposes damage liability on an employer (according to the general rules of civil law) that is found to violate the prohibition of discrimination. Both acts also included a provision on the reversed burden of proof, which states that in

the event of a dispute, a candidate or worker cites facts that give grounds to suspect that the prohibition of discrimination has been violated, the employer must demonstrate that in the case in question the principle of equal treatment and the prohibition of discrimination was not violated. As already stated, **when discussing complaints received so far, the Ombudsman has not learned of a case in which it was evident that circumstances occurred in the relevant proceedings whereby requirements regarding effectiveness arising from the Constitution or the Convention were no longer met.**

In the UWE's additional reply of 11 April 2017 (Case document No. 3), the Ombudsman is not mentioned explicitly. In comparison to the above complaint, the focus is only on labour inspectors (in Chapter 2: **On the relevance and detail of the arguments put forward in the collective complaint**, it is stated that "the policy adopted by the bodies responsible for labour inspections, as noted in the collective complaint raises some doubt as to its effectiveness : Page 36, "103. Labour inspectors seldom find violations related to the prohibition of sex and gender-based discrimination . Nevertheless..."). Any particular comment by the Ombudsman on this matter seems uncalled for.

Thus, for the reasons stated above, the Ombudsman concludes that the UWE's allegations as summarised by the European Committee of Social Rights in its decision of 4 July 2017 (no. 137/2016) that (Point 1, indent a) the existing legislation is ineffective (also) because the Ombudsman has failed to perform in practice its supervisory tasks regarding equal pay for women and men, and (Point 7) that the Ombudsman has (also) failed to remove the existing obstacles to submitting complaints regarding discrimination on the basis of unequal pay for the same, similar or comparable work of women and men, is utterly unfounded.