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

28 May 2018

Case Document No. 8

University Women of Europe (UWE) v. Ireland
Complaint No. 132/2016

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

Registered at the Secretariat on 30 March 2018

Introduction

The Irish Human Rights and Equality Commission ('the Commission' or 'IHREC'), established under the Irish Human Rights and Equality Commission Act 2014, is both the national human rights institution and the national equality body for Ireland. In accordance with its founding legislation, the Commission is mandated to 'keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality' and 'to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights and equality'.¹

In 2017 the European Committee of Social Rights of the Council of Europe ruled the collective complaint submitted by the University Women of Europe against Ireland admissible. Further to this the Committee contacted Equinet to request the observations of the Commission regarding the case files submitted by the Government Ireland. Having reviewed the case files, IHREC's contribution seeks to provide information 'on the situation in law and in practice as regards equal pay in each of the countries concerned, focusing on the implementation of measures aimed at reducing and closing the gender pay gap, through the work of equality bodies or otherwise', as requested by the Committee.

The situation in law and practice

Employment Equality Acts 1998-2015

The submission from the Government of Ireland on the merits of the complaint comprehensively outlines the prohibition of gender discrimination in legislation and the protection of the principle of equal pay for equal work in legislation.²

The Government of Ireland submits that 'the complainant has provided no evidence as to the alleged lack of effectiveness of this legislation'.³ The Commission has previously commented on the effectiveness of the Employment Equality Acts 1998-2015. In an address to a symposium on "*Rising to the challenge - addressing Ireland's gender pay gap*" in January 2018, jointly hosted by the Departments of Business, Enterprise and Innovation and of Justice and Equality, the Chief Commissioner of the IHREC, Emily Logan, observed the following:

One of the issues with the current legislative framework is that an individual claimant must identify a specific named comparator, who is performing 'like work' for the same or an associated employer. This requires a potential claimant to gather information on the pay of a male colleague. While the claimant has a right to information under section 76 of the

¹ Section 10(2)(b), (d) of the Irish Human Rights and Equality Commission Act 2014.

² *University Women of Europe v Ireland*, Complaint No 132/2016, Submissions by the Government on the Merits, Case Document No 5, 31 October 2017, para 6-18.

³ *University Women of Europe v Ireland*, Complaint No 132/2016, Submissions by the Government on the Merits, Case Document No 5, 31 October 2017, para 6.

Employment Equality Acts 1998-2015⁴ but there is no obligation on the employer to provide this information. As a result, it can be very difficult for claimants to prove an equal pay case.⁵

The Government of Ireland submitted that ‘the complaints procedure and remedies available provide adequate protections to ensure that men and women receive equal pay for equal work’.⁶ In its 2017 report to the UN Committee on the Elimination of Discrimination Against Women, the Commission stated:

Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination.⁷ Similar limitations on compensation in other EU Member States have been found to be incompatible with EU law.⁸ This has led Ireland’s compliance with EU law being questioned, particularly in relation to the question of ‘whether the legislation includes real and effective compensation’.⁹ In gender discrimination cases, the complainant may refer their case to Circuit Court,¹⁰ where compensation is not limited¹¹ but the individual may face other barriers such as increased costs, particularly if the claim is lost.¹²

Relevant provisions in the Irish Human Rights and Equality Commission Act 2014

⁴ The claimant has a right to information under section 76 of the Employment Equality Acts 1998-2015 but there is no obligation on the employer to provide this information. In *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss* (C-109/88) [1989] ECR 3199, the Court of Justice of the European Union held that if the pay system is completely lacking in transparency, the burden of proof shifts to the employer to show that the pay system is not discriminatory.

⁵ Remarks by Chief Commissioner Emily Logan, Irish Human Rights and Equality Commission, available: <http://www.genderequality.ie/en/GE/12.%20Chief%20Commissioner%20Emily%20Logan%20IHREC.pdf/Files/12.%20Chief%20Commissioner%20Emily%20Logan%20IHREC.pdf>. See further: Bolger, Bruton and Kimber (2012) *Employment Equality Law* (Roundhall: Dublin), para 11.04.

⁶ *University Women of Europe v Ireland*, Complaint No 132/2016, Submissions by the Government on the Merits, Case Document No 5, 31 October 2017, para 33.

⁷ Section 82(4) of the *Employment Equality Acts 1998–2015* provides that the maximum amount that can be paid in compensation is the greater of 104 weeks’ pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of the *Equal Status Acts 2000–2015* provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

⁸ In *Marshall v Southampton & South-West Hampshire Area Health Authority (No.2)* [1993] European Court Reports I-4367 the Court of Justice of the European Union held that the setting of a national upper limit on the award of compensation was not permissible as this could not properly fulfil the requirement that a remedy must be effective. EU equality law requires the provision of effective, proportionate and dissuasive remedies: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 17; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 15; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 14; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 25 – Article 18 of the Recast Directive also prohibits the fixing of a prior upper limit of compensation except in relation to cases involving access to employment.

⁹ European Commission (2016) *Country report: Ireland – Gender equality: How are EU rules transposed into national law*, p. 47. This report relates to the period 1 January 2014 – 1 July 2015 and was prepared by Frances Meenan for the European network of legal experts on gender equality and non-discrimination. Available at: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf

¹⁰ Section 77(3)(b) of the *Employment Equality Acts 1998–2015*; Section 21(1A) of the *Equal Status Acts 2000–2015*.

¹¹ Section 82(3) of the *Employment Equality Acts 1998–2015*; Section 27(5) of the *Equal Status Acts 2000–2015*.

¹² IHREC (2017) *Ireland and the UN Convention on the Elimination of All Forms of Discrimination Against Women*, p. 35-36.

The Government of Ireland has provided information on the functions of the Commission, as set out in section 10 of the Irish Human Rights and Equality Commission Act 2014.¹³

Some of the enforcement and compliance provisions, set out in Part 3 of the 2014 Act, may also be of interest to the Committee. This part includes codes of practice (section 31), equality reviews and equality action plans (section 32), substantive notices (section 33), inquiries (section 35), equality and human rights compliance notices (section 36) and the institution of legal proceedings by the Commission (section 41).

Section 42(1) of the Irish Human Rights and Equality Commission Act 2014 also enshrines the Public Sector Equality and Human Rights Duty in statute. This requires all public bodies in the performance of their functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights.¹⁴ Section 42(2) of the Irish Human Rights and Equality Commission Act 2014 requires public bodies to provide an assessment of the human rights and equality issues relevant to their functions in their strategy statements and are also required to provide an update on their activities in each annual report. The legislation came into effect on 1 November 2014. Under section 42(3) the Commission 'may give guidance to and encourage public bodies in developing policies of, and exercising, good practice and operational standards in relation to, human rights and equality'. The Commission is working with a number of public bodies to pilot the self-assessment process in order to assist public bodies to comply with the requirements of section 42. One of these projects is taking place in the higher education sector, through a pilot project with University College Cork.

Measures aimed at reducing and closing the gender pay gap through the work of equality bodies and others

Legislative developments

In 2017, the Labour Party, which is currently in opposition, introduced the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 in parliament. The purpose of the Bill is to develop a 'Gender Pay Gap Information Scheme that would require employers to publish information in relation to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the nature and scale of such differences'.¹⁵ Since then the Government of Ireland has indicated that it is currently developing legislative proposals on the same matter.¹⁶

¹³ *University Women of Europe v Ireland*, Complaint No 132/2016, Submissions by the Government on the Merits, Case Document No 5, 31 October 2017, para 35.

¹⁴ Section 42(1) of the *Irish Human Rights and Equality Commission Act 2014*.

¹⁵ Presentation from Senator Ivana Bacik, who introduced the Bill to parliament, at a symposium on "*Rising to the challenge - addressing Ireland's gender pay gap*", January 2018, available:

<http://www.genderequality.ie/en/GE/11.%20Senator%20Bacik%20-%20GPG%20Symposium%20-%2010Jan2018.pdf/Files/11.%20Senator%20Bacik%20-%20GPG%20Symposium%20-%2010Jan2018.pdf>

¹⁶ See:

https://www.taoiseach.gov.ie/DOT/eng/News/Government_Press_Releases/Government_Legislation_Program_Spring_Summer_2018.html

Policy developments

The Government of Ireland has provided information on policy measures, including a 2017 consultation on the gender pay gap.¹⁷ In its 2017 report to the UN Committee on the Elimination of Discrimination Against Women, the Commission expressed concerns about the gender pay gap, the gender pension gap and a number of issues related to gender and participation in the labour market.¹⁸ In that report the Commission also welcomed steps taken address the gender imbalance in the higher education sector, as well as the publication of the Higher Education Authority's *Gender Equality Review* in 2015.¹⁹

Guidance to employers

In 2013, the Equality Authority (the predecessor equality body before the IHREC was established in 2014) and the European Social Fund co-funded the development of a Gender Pay Review toolkit by IBEC. In 2016, the Commission took the decision to prepare a draft Code of Practice on Equal Pay across all grounds in accordance with section 31 of the Irish Human Rights and Equality Commission Act 2014. It is hoped that the Code will assist employers, employees, trade unions and others by providing a clear understanding of the law and guidance on how to prevent discriminatory pay practices.

¹⁷ *University Women of Europe v Ireland*, Complaint No 132/2016, Submissions by the Government on the Merits, Case Document No 5, 31 October 2017, para 38-43.

¹⁸ IHREC (2017) Ireland and Convention on the on the Elimination of All Forms of Discrimination Against Women, p 89-95.

¹⁹ IHREC (2017) Ireland and Convention on the on the Elimination of All Forms of Discrimination Against Women, p 85. See also: Higher Education Authority (2016) *National Review of Gender Equality in Irish Higher Education Institutions*