



EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

February 2023

**FOLLOW-UP TO DECISIONS ON THE MERITS OF
COLLECTIVE COMPLAINTS**

FINDINGS 2022
(adopted in December 2022)

This text may be subject to editorial revision

GENERAL INTRODUCTION

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, certain States – namely those bound by the collective complaints procedure – were exempted from reporting on the provisions subject to assessment in the framework of the ordinary “Conclusions”. These States were instead invited to provide information on the follow-up given to the decisions on the merits of collective complaints in which the European Committee of Social Rights had found violations.

This document presents the findings of the Committee adopted at its 331st session (5-9 December 2022) concerning the follow-up to decisions and based on the state reports which were due by 31 December 2021. The following States are concerned:

- Croatia
- Cyprus
- Czech Republic
- the Netherlands
- Norway
- Slovenia
- Sweden

It is recalled that the States bound by the collective complaints procedure have been divided into two groups, A and B. The States covered by the present findings form part of group B. Spain, which became bound by the complaints procedure in July 2021, also belongs to this group, but since there have as of yet been no decisions on the merits concerning complaints lodged against Spain, this State is not included in the present findings.¹

¹ For more details, see [Reporting system of the European Social Charter - Social Rights \(coe.int\)](https://www.coe.int/en/web/european-social-charter/reporting-system).

CROATIA

1st Assessment of follow-up: University Women of Europe (UWE) v. Croatia, Complaint No. 126/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)3

1. Decision of the Committee on the merits of the complaint

A. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding access to domestic remedies

In its decision, the Committee concluded that there was a violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter on the ground that access to effective remedies was not ensured, in particular on the basis of the existing obstacles to accessing judicial proceedings (such as the costs and the difficulties to access the necessary case law), together with the difficulties to obtain information regarding pay, as well as the fact that it was not demonstrated that a shift in the burden of proof was ensured.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding pay transparency

In its decision, the Committee concluded that there was a violation of Article 1.c of the 1988 Additional Protocol on the ground that pay transparency was not ensured, in particular because the principle of pay transparency does not appear in the legislation and that there is no information on whether individual workers have access to relevant data concerning pay, either within their company or outside the company.

C. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

In its decision, the Committee concluded that there was a violation of Article 1.c of the 1988 Additional Protocol on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

D. Violation of Article 1.d of the 1988 Additional Protocol to the 1961 Charter regarding ensuring a balanced representation of women in decision-making positions within private companies

In its decision, the Committee concluded that there was a violation of Article 1.d of the 1988 Additional Protocol on the ground that there was insufficient measurable progress in ensuring a balanced representation of women in decision-making positions within private companies.

2. Information provided by the Government

A. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding access to domestic remedies

The report states that gender equality is one of the highest values of the constitutional order of Croatia and is the basis for the interpretation of the Constitution in general. The new National Plan for Promotion of Gender Equality is the basic medium term strategic document which will be adopted with the aim of eliminating all forms of gender discrimination and establishing real gender equality by implementing equal opportunities policies. This medium-term vision of development is harmonised with long-term acts of strategic planning, i.e., National Development Strategy of the Republic of Croatia by 2030 (the National Development Strategy)

which sets out the vision of Croatia as a society free from discrimination on any ground, including gender and sexual orientation. The annual Strategic Plans for the period from 2016 to 2022 has as one of the priority goals is the “Elimination of gender discrimination and creating conditions for real equality of women and men in society”.

The report further states that victims of discrimination (which includes pay discrimination) are provided with legal protection. Discrimination and employment proceedings are considered urgent proceedings. In employment proceedings, the proceedings before the court of first instance must be completed within six months from the day the lawsuit was filed, while the court of second instance must decide on the appeal filed against the decision of the court of first instance within thirty days of receiving the appeal (Article 434 of the Civil Procedure Act).

Pursuant to Article 20, paragraph 1 of the Anti-Discrimination Act, if a party makes it probable that discrimination has occurred, in that case the burden of proof that there was no discrimination is on the other party, thus placing the victims of discrimination in a more favourable position than the general rule on the burden of proof. It is an instrument for overcoming factual uncertainty. The burden of proof according to Article 221a of the Civil Procedure Act is applied only at the end of the evidentiary proceedings, but also in the case where the court can not reach a conclusion on the existence or non-existence of facts on the basis of presented evidence or when neither party has presented evidence to establish the fact that is decisive for the application of the rule of law. The Labour Act stipulates that the burden of proof in labour disputes lies with the party whose right has been violated, i.e., who initiates the dispute.

Pursuant to Article 219 of the Civil Procedure Act, each party is obliged to state the facts and propose evidence on which to base their claims or to refute the allegations and evidence of the opponent, and the court may, until the conclusion of the previous proceedings, when it deems it expedient for the proper resolution of the dispute, warn the parties about this duty, and in particular to the need to present decisive facts and propose certain evidence, and to state the reasons why it deems it necessary. The parties can request the acquisition of data from the employer on the pay of a comparative worker within the court proceedings for the purpose of proving in a specific case (Article 232, paragraph 3 and Article 233 of the Civil Procedure Act).

Regarding the costs of proceedings, Article 154 of the Civil Procedure Act stipulates that the costs of proceedings are to be carried by the losing party, so the report states that the costs cannot be considered an aggravating circumstance for ensuring access to effective remedies if the party succeeds in proving discrimination. In addition, certain categories of persons are provided with free legal aid if certain preconditions are met.

Regarding access to legal remedies, the report emphasises that victims of discrimination, as well as other parties in proceedings, have the right to file an appeal against first-instance decisions, as well as the right to file for extraordinary legal remedies. Pursuant to the provisions of Article 382a of the Civil Procedure Act, parties may exceptionally file for revision against a second-instance judgment, without the permission of the Supreme Court of Croatia, in disputes over anti-discrimination lawsuits (extraordinary revision allowed), which also indicates a more favourable procedural position of these parties. Furthermore, with regard to claims related to discrimination, it is possible to file lawsuits for the protection of collective interests and rights against a natural or legal person who, by performing a certain activity or work in general, with his or her acts, including omissions, seriously violates or seriously endangers such collective interests and rights, by associations, bodies, institutions or other organisations established in accordance with the law, which within their registered or regulated activities deal with the protection of collective interests determined by law and rights of citizens, when such authority is explicitly provided by special act and with conditions provided by that Act.

Regarding the accessibility of case law, there is a public internet portal, “Case Law”, on the website of the Supreme Court of the Republic of Croatia. On this portal, the Supreme Court of the Republic of Croatia publishes all its decisions, and the most important decisions of other courts are also published. Access to this portal is free.

Moreover, the Office for Human Rights and the Rights of National Minorities of Croatia has organised several online trainings on non-discrimination topics in 2021 and other trainings and online lectures will be organised in 2022.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding pay transparency

In order to implement measures indicated in the Committee of Ministers’ Recommendation CM/RecChS(2021)3, it was proposed that the Action Plan for Gender Equality for the Period by 2024, which is in its final draft phase, include measures to increase pay transparency. The draft of the mentioned Action Plan identifies 7 specific objectives, including specific objective no. 2, which aims to improve the position of women in the labour market. The key measures aimed at achieving this specific objective are: increasing the pay transparency, the need to revise the pay system in a gender-neutral way, enabling a better balance of business and private life and strengthening women’s competencies to enter entrepreneurship. Through these measures, the gender pay gap between men and women strives to be reduced to 7% by 2027.

C. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Government considers it important to continue working on abolishing all types of pay discrimination and thus gender pay discrimination. For this purpose, the existing legislation will need to be amended, primarily the Labour Act, the Anti-Discrimination Act and the accompanying bylaws and acts. In 2022, Croatia will adopt a new Labour Act that will be harmonised with the Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union and Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. It is expected that when transposing Directive (EU) 2019/1158 on work-life balance, the new legal provisions will make it easier for parents to balance family and private life with professional life.

D. Violation of Article 1.d of the 1988 Additional Protocol to the 1961 Charter regarding ensuring a balanced representation of women in decision-making positions within private companies

Despite continuous efforts and encouraging improvements, the Government recognises that men continue to outnumber women in decision-making positions and positions of power. Stereotypes, patriarchal culture, and numerous prejudices are the causes of such a situation, with women consequently making it much harder than men to decide to pursue politics and climb the career ladder to the highest management positions. Therefore, measures are being taken to systematically empower women to participate in such processes, and efforts are being made to create systemic preconditions for women to realize their potential. As an example of these measures, the project: “Re-create work and life for women and men.” The aim of this project is to encourage companies to introduce new business practices that will encourage the reconciliation of family and business life for women and men, promote more equal participation of mothers in the labour market and the active role of fathers in childcare.

In the companies listed on the stock exchange in Croatia, women account for only 10% of persons in the highest decision-making positions, 9.5% of CEOs are women the proportion of women in company management boards is 26.7% and 4.8% of management board presidents are women.

3. Assessment of the follow-up

A. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding access to domestic remedies

The Committee notes from the report the reference to existing legislation, which it already assessed in the decision on the merits. However, even if the legislation provides for a shift of the burden of proof from the complainant to the respondent, the decision pointed to the fact that the burden of proof was not adequately implemented by courts, given that clear criteria had not been established by the very limited case law. Moreover, the Committee in its decision arrived at a finding of violation in ensuring access to domestic remedies based also on the lack of information on the number of relevant cases on gender pay discrimination and the complexities in accessing the domestic case law. The report does not contain any specific information about the number of cases introduced on gender pay gap, on how cases are implemented and on how the shift in the burden of proof is implemented in practice.

The Committee considers, in the light of the information at its disposal, that the situation has not been brought into conformity with the 1961 Charter on this point.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding pay transparency

The Committee notes from the report that it refers to a new strategic reform for eliminating further pay discrimination between women and men in the labour market and introducing pay transparency, which is under way.

The Committee reiterates its invitation to the authorities to pursue further the measures already taken in order to ensure that pay transparency is guaranteed by introducing it in legislation and ensuring it in practice, by allowing individual workers to have full access to relevant data concerning pay, either or within their company or outside the company.

In the meantime, the Committee considers that the situation has not yet been brought into conformity with the 1961 Charter on this point.

C. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Committee notes the planned reforms of the existing legislation and the new Labour Act that will be adopted in 2022 to be harmonised with EU Directives on transparent and predictable working conditions and on work-life balance for parents and carers. The planned measures will facilitate and improve labour market conditions and promote gender equality.

The Committee notes from Eurostat that the unadjusted gender pay gap in 2020 in Croatia stood at 11.2%, which is below the European Union average, but a rather small reduction compared to 12.3% in 2017. It therefore invites Croatia to continue on-going efforts to reduce further the adjusted and unadjusted gender pay gap and also to adopt any appropriate additional measures.

In the meantime, the Committee considers that the situation has not yet been brought into conformity with the 1961 Charter on this point.

D. Violation of Article 1.d of the 1988 Additional Protocol to the 1961 Charter regarding ensuring a balanced representation of women in decision-making positions within private companies

The Committee notes that the Government recognises that the representation of women in decision-making positions within private companies is still low in Croatia, in spite of several measures adopted, such as those directed to empower women and also those directed to companies themselves. However, the Committee also notes that no legislative measures have been implemented in this field.

On the basis of the information at its disposal, the Committee considers that the situation has not been brought into conformity with the 1961 Charter on this point.

CYPRUS

1st Assessment of follow-up: University Women of Europe (UWE) v. Cyprus, Complaint No. 127/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)4

1. Decision of the Committee on the merits of the complaint

A. Violation of Article 20.c of the Charter

In its decision, the Committee found that there was a violation of Article 20.c of the Charter on the ground that pay transparency is not ensured in practice.

B. Violation of Article 20.d of the Charter

In its decision the Committee found that there was a violation of Article 20.d of the Charter on the ground that insufficient progress was made in ensuring a balanced representation of women in decision-making positions within private companies.

2. Information provided by the Government

A. Violation of Article 20.c of the Charter

In its report, the Government refers to the Committee of Ministers' Recommendation CM/RecChS(2021)4, in which the Committee of Ministers recommended that Cyprus:

- clarify the notion of equal work or work of equal value in domestic law as necessary, either through legislation or case law and promote gender neutral job classification and evaluation systems;
- introduce an obligation for employers to regularly report on wages and produce disaggregated data by gender; entitle workers to request and obtain, in the context of judicial proceedings, information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.

According to the Government, the Ministry of Labour, Welfare and Social Insurance proceeded through a consultation procedure with the social partners, for exchanging views on the content, parameters and implications of potential binding pay transparency measures, taking into account the current conditions of the economy and the labour market, but also the specific characteristics of the national labour relations system. A working paper and questionnaire were prepared by the Ministry. More specifically, the social partners were asked to express their views on the possibility of adopting any of the following measures in the near future:

- the right of employees to request and receive information on their individual pay level, and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs
- the obligation of employers to provide information about the initial pay level or its range in published job vacancies;
- the obligation of employers to prepare and publish on an annual basis, indicators on the gender pay gap concerning their organisation;
- the establishment of analytical tools or methodologies for the assessment and comparison of the value of work;
- the signing of a memorandum by the social partners in order to ensure that the gender pay gap will be thoroughly discussed during collective bargaining.

Through this procedure, trade unions expressed their support in every proposed binding pay transparency measure as a means to revealing gender bias and discrimination and lifting procedural obstacles for victims of discrimination when claiming their right to equal pay. On the other hand, Employers' Organisations consider that greater transparency will not minimise the gender differences in pay.

As regards the recommendation to clarify the notion of equal work or work of equal value in domestic law, the report states that national legislation lays down parameters for establishing the equal value of the work performed. More specifically, Article 18 of the Law No.177(I)/2002 on equal pay between men and women for equal work or work of equal value provides for criteria for comparing and evaluating work of equal value, relating to a particular occupational category or economic sector which include amongst others (i) the nature of the duties performed, (ii) the degree of responsibility, (iii) the qualifications, skills and seniority, (iv) the requirements related to physical or mental qualifications e.g. skills, effort, (v) the conditions under which the work is performed.

B. Violation of Article 20.d of the Charter

In its report, the Government refers to the Committee of Ministers' Recommendation CM/RecChS(2021)4, in which the Committee of Ministers recommended that Cyprus review and reinforce existing measures aimed at promoting an effective parity in the representation of women and men in decision-making positions in both the public and private sectors. It also recommended that Cyprus consider adopting any new measures that may bring about measurable progress within reasonable time in reducing vertical segregation in the labour market.

According to the Government, the balanced participation in decision-making positions is included within the seven basic pillars of action of the National Action Plan for Equality between Women and Men 2019-2023. To achieve this, the Ministry of Justice and Public Order provides grants for programmes by Non-Governmental Organisations and other bodies that are working in the field of gender equality. At present, a series of educational seminars has started, aimed at women who wish to be actively involved in politics. These seminars will continue on a regular and systematic basis and are expected to finish/conclude within the first six months of 2022. The seminars to boost women have been organised on an initiative by the Commissioner for Gender Equality and the National Machinery for Women's Rights, fully funded by the Ministry of Justice and Public Order. More specifically, the seminars aim to encourage women to get involved in politics; to improve and boost their managerial skills; to showcase good ways of managing political life; to prepare women to undertake political office; and to teach ways to manage the challenges and difficulties arising from a career in politics. At the same time, in collaboration with the legal faculties of academic institutions, the Ministry of Justice and Public Order is studying possible ways to introduce temporary positive measures which aim to increase the number of women in crucial decision-making positions, including managerial positions in the private sector.

3. Assessment of the follow-up

A. Violation of Article 20.c of the Charter

In its decision, the Committee considered that due to the lack of pay transparency and hence of information on comparable jobs and pay levels, it was difficult for a potential victim of gender pay discrimination to successfully bring a case to court.

The Committee notes from the Country Report on Gender Equality of the European Network of Legal Experts in Gender Equality and non-Discrimination (Cyprus, 2022) that the legislation

does not provide for a wage transparency requirement in the sense of obliging employers to disclose pay rates and the gender pay gap generally or to the interested party. Under Article 14 of Law No.177(I)/2002, employers and any employees must disclose any relevant information to the Inspector if requested. The Committee further takes note of Article 18 of Law No.177 (I)/2002, which provides criteria for defining equal work.

The Committee also takes note of the consultation procedure launched by the Ministry of Labour, Welfare and Social Insurance to promote pay transparency and gender neutral job classification systems. The Committee observes that measures have been designed to be implemented with a view to promoting pay transparency. However, the Committee notes that these measures do not go to the heart of the matter and have not yet been implemented and that therefore, the obligation to ensure pay transparency has not yet been satisfied in practice. Therefore, it considers that the situation has not been brought into conformity in this respect.

B. Violation of Article 20.d of the Charter

The Committee recalls that Article 20.d of the Charter imposes positive obligations on States to tackle vertical segregation in the labour market, by means of, inter alia, promoting the advancement of women in decision-making positions in private companies. This obligation may entail introduction of binding legislative measures to ensure equal access to management boards of companies. Measures designed to promote equal opportunities for women and men in the labour market must include promoting an effective parity in the representation of women and men in decision-making positions in both the public and private sectors.

The Committee takes note of the measures taken by the Government to reduce the vertical segregation in the labour market. However, the Committee notes from the European Institute for Gender Equality (EIGE) that in 2022 the share of women on boards of largest listed companies stood at 9.8%, down from 10.4% in 2017. The Committee takes note of this negative trend and considers that the situation has not been brought into conformity with the Charter.

CZECH REPUBLIC

4th Assessment of follow-up: Association for the Protection of Children (APPROACH) Ltd. v. Czech Republic, Complaint No. 96/2013, decision on the merits of 15 January 2015, Resolution CM/ResChS(2015)11

1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 17 of the 1961 Charter on the ground that not all forms of corporal punishment that is likely to affect the physical integrity, dignity, development or psychological well-being of children, were prohibited.

2. Information provided by the Government

The Government refers to the National Strategy to Protect Children's Rights for 2021-2029 which was approved on 14 December 2020 by the resolution of the Government No. 1323. The strategy has several objectives: to protect rights of every child and to meet their needs, to perfect the system so that it promotes the quality of life of children and families and eliminate discrimination, to foster the overall development of the child. The issue of violence against children is a key aspect of the safe care of children and one of the measures to be adopted is to raise awareness about positive parenting and reduce the social tolerance of abuse and neglect of children.

The Government further states that the First Action Plan to implement the strategy sets tasks for the first implementation period of the strategy (2021 to 2024).

The Government also states that a section of the Action Plan for the Prevention of Domestic and Gender-Based Violence for 2019-2022 addresses violence against children or more specifically corporal punishment.

Also, the national Expert Panel on the Execution of the Judgments of the European Court of Human Rights examined the decision in Complaint No. 96/2013 on 14 January 2020. As a result of this meeting, a meeting of experts on corporal punishment of children was held on 9 November 2021, which discussed the options for amending the Civil Code, the coordination of efforts of medical doctors, teachers, employees of social and legal protection of children services, police, lawyers, judges, public prosecutors and other entities whenever it is found that a child is being punished. The experts are likely to convene for further meetings.

Further, the Government provides information about the Concluding observations on the combined fifth and sixth reports of the Czech Republic of 22 October 2021 by the United Nations Committee on the Rights of the Child, where it reiterated the need to explicitly prohibit corporal punishment in law, in all forms and settings.

Moreover, the Government states that the Working Group for Work with Children Affected by Violence in the Family was formed with a view to formulating standards for work with children affected by violence in the family.

Finally, the Government notes that the legislative ban on corporal punishment alone will not solve the situation and there is a need to change the attitude of the society, which is being pursued by creating working groups, awareness raising campaigns, etc.

3. *Assessment of the follow-up*

The Committee takes note of the developments mentioned by the Government. The Committee notes that non-legislative measures are equally as important as the legislative ones, however, according to its constant case law the Charter requires that the complete prohibition of corporal punishment be expressly and comprehensively introduced in law.

The Committee invites the Government to submit information on any further legislative developments on the matter, especially on the amendments of the Civil Code.

Meanwhile, as the legislative situation has not yet changed, the Committee reiterates its finding that the situation has not been brought into conformity with the 1961 Charter.

2nd Assessment of follow-up: European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, Resolution CM/ResChS(2017)2

1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found violations of:

A. Article 16 of the 1961 Charter on the grounds of insufficient access for Roma families to housing, poor housing conditions and territorial segregation, and forced evictions.

In particular, the Committee found that legislation permits the eviction of individuals and families without requiring the provision of alternative accommodation. Furthermore, not all legislation permitting evictions ensures the necessary safeguards required by Article 16 of the 1961 Charter, such as the prior consultation of affected parties, or the obligation to propose alternative accommodation.

B. Article 11 of the 1961 Charter on the grounds of exclusion of Roma in the field of health and of inadequate access to health care services.

2. Information provided by the Government

A. On the violation of the right to housing – Article 16

i. Access to housing for Roma, territorial segregation and poor housing conditions

In 2021, the Government of the Czech Republic approved the “Housing Policy Concept of the Czech Republic 2021+” and the “Social Inclusion Strategy 2021-2030”. In 2021 the Government of the Czech Republic also approved the “Strategy for Roma Equality, Inclusion and Participation 2021-2030”, aimed at complementing the mainstream measures of the “Social Inclusion Strategy 2021-2030” for the Roma population.

The objectives of the “Strategy for Roma Equality, Inclusion and Participation 2021-2030” dovetail those of the previous “Roma Integration Strategy until 2020”. The Strategy is aimed at ensuring Roma’s equal access to good housing, which includes: (i) the reduction of discrimination and segregation in access to housing; (ii) increasing the quality and affordability of housing to socially excluded people, including Roma; (iii) supporting access to housing, and; (iv) measures in monitoring and data collection. The Roma Integration Strategy Committee has been set up to boost the monitoring and evaluation system. The Strategy is to be evaluated every year. The first revision of the Strategy is planned for 2023.

ii. Safeguards against forced eviction

In the cases of eviction under civil law, the Civil Code lays down a three-month notice period before termination of the lease. In addition, a forced eviction may only take place after a court order to vacate the property that the former tenant failed to comply with. This court decision must be notified to the liable party at least 15 days in advance. The national Expert Panel on the execution of the judgments of the European Court of Human Rights is considering whether these safeguards could be strengthened by ensuring that the municipality where the eviction will take place is advised in due time of the impending eviction.

A new Building Act was adopted on 1 July 2021. In the cases of eviction from a property under the building legislation, this new law provides that the eviction order from the Building Office

must be notified without undue delay to the evicted person, the property owner, the person carrying out the eviction and the municipality.

iii. *Timing of the actual eviction*

Pursuant to new Section 64 of Decree No. 37/1992, as amended by Decree No. 222/2021, as of 1 January 2022, when setting the date and time of the enforcement of a decision of eviction, the court shall take into account the suitability of the time of the day on which the eviction is to be carried out and of the weather conditions that can be expected on the day of eviction so that the eviction does not put at risk the life or health of the persons being evicted.

iv. *Preventing evictions*

The Ministry of Justice, the Ministry of Labour and Social Affairs, and the Ministry for Regional Development are discussing how to inform the municipality where the eviction is about to take place. This is with the aim of allowing such municipality to offer social services in a timely fashion to the affected person in order to completely avoid eviction, or to help them deal with the circumstances after they have been evicted

The Ministry of Justice and the Ministry for Regional Development are discussing how to strike a balance between the rights of landlords, the rights of tenants and the public interest in ensuring affordable and stable tenancy housing, in cases of fixed-term leases for short periods and in cases of use of notarial direct enforceability clauses.

To deal with situations that concern the refusal of the property owner to carry out maintenance works, the new Building Act provides that when the Building Office finds that a building presents defects that the owner failed to repair, it can order either maintenance work or, if the lives or health of persons or animals are at risk, that the owner secure the property as necessary. If the owner fails to comply with the order of the Building Office, it is obliged to pay the costs. Failing that, the Building Office will pay the costs from the state budget and order the owner to reimburse them to the Building Office.

v. *Course of action during evictions*

The Ministry for Regional Development, as well as the national Expert Panel on the Execution of Judgments of the European Court of Human Rights and the Civil Law Panel of the Academy of Sciences, are also discussing how to provide shelter to persons forced to leave the property where they had been living due to an eviction order.

B. On the violation of the right to health care – Article 11

i. *Sufficient access to health care*

• *Measures taken*

With the aim of improving access to health care services among the communities living in socially excluded localities, the Ministry of Health has implemented the following projects:

Since 2018, the five-year running “*Effective Health Promotion for Persons at Risk of Poverty and Social Exclusion*” project provides comprehensive health promotion services to persons at risk of poverty, including Roma. By the end of 2020 there were 56 health mediators, who integrate socially disadvantaged Roma at community level by helping them register with primary care practitioners, by helping them find specialists and by developing the health literacy competencies of people.

Since 2019, the “Ensuring access to health care for homeless people and people at risk of homelessness” project has been running in four regional capitals selected on the basis of an analysis of needs. The main objective of the project is to improve access to health care services and health care in localities at risk of homelessness for homeless persons and persons at risk of homelessness. The secondary objective of the project is to bolster primary prevention among these populations.

Since 2020, the “*Applied Research for Innovating Policies Concerning Health Care Accessibility for Roma People Living in Social Exclusion*” project focuses on the social determinants of health and structural, financial, cognitive and psychological barriers to accessing health care services of Roma living in social exclusion. Based on its findings, the research proposed solutions to improve the accessibility of health care for Roma living in social exclusion, such as awareness raising among the target group, better local and financial accessibility of health care and education helping professions. These proposals were sent to the key actors for their implementation.

- *Measures planned*

Roma Integration Strategy 2021-2030: Chapter 9 of the Strategy provides that the Ministry of Health will ensure that by the end of 2024 master’s degree in general medicine and dental medicine include mandatory courses on intercultural and intersocial communication and culturally sensitive approaches to health care. As regards the gathering of representative quantifiable data on health and caring for health among Roma in all regions, at least six quantitative research studies are to be carried out. These studies should focus, inter alia, on: a) knowledge of key topics of health literacy of Roma; b) metrics of actual participation of Roma in preventative exams and screening programmes; c) actual accessibility of primary medical care for socially excluded Roma; d) prevalence of infectious and selected non-infectious diseases (with particular emphasis on diseases that available individual research indicate as contributing the most to health inequality affecting Roma). Furthermore, with the aim of ensuring accessibility of medical services in terms of time, location, capacity, and cost, specifically for socially excluded populations, including Roma, the practical implementation by 2025 of the Government Decree No. 307/2012 on travel time and local availability of health care services is to be monitored. In addition, by 2025 models of cooperation between health insurance companies and practitioners and health care institutions should be implemented with the aim of creating the conditions for the detection and sanctioning of discrimination on grounds of nationality, ethnicity, social status, place of residence, age, etc. in access to health care.

Social Inclusion Strategy 2021-2030: Chapter 4.7 of the Strategy provides for the adoption of the following measures: (i) levelling the availability of health services for socially excluded and disadvantaged people in a given area (municipality, district, region); (ii) improving cooperation between social services, health services and scientific institutions; (iii) improving awareness about and orientation in the field of rights and obligations of the insured and the patient applied in access to primary health care, including prevention; (iv) effective acquisition of knowledge about the rights and obligations of the insured and the patient.

Implementation of the plan for the strategic framework for health care development in the Czech Republic by 2030: The objectives of this plan are to implement region-specific models of integrated care and to increase accessibility of integrated health care and social services and integration of health, work, and social rehabilitation.

ii. *Inadequate living conditions*

- *Measures taken*

40 out of the 68 designed preventative interactive programmes aimed at reducing lifestyle risk factors have already been carried out. Within the period 2018-2020, almost 4,000 group interventions and several individual interventions took place in all regions of the Czech Republic.

- *Measures planned*

Roma Integration Strategy 2021-2030: The Strategy foresees that the Ministry of Health and the Ministry of Labour and Social Affairs shall create a multi-disciplinary team in each region to address health problems and other associated issues of socially excluded persons in a comprehensive manner.

Moreover, in 2020, the Ministry of Health launched the call “*Preventing Communicable and Noncommunicable Diseases in Socially Excluded Localities*”, with a Focus on the Roma Population under the Health Programme co-financed by European Economic Area (EEA) grants in 2014–2021.

3. Assessment of the follow-up

A. On the right to housing – Article 16

In its report the Government indicates several positive developments, mainly the adoption of the Strategy for Roma Equality, Inclusion and Participation for 2021-2030, the adoption of the new Building Act and the amendment of Decree No. 37/1992. However, the Committee notes that the right to housing is not clearly addressed in the new legislation. It also notes that the Social Housing Act has not yet been adopted.

The information provided remains general on the actual needs in the housing field, targets or achievements to date (number of beneficiaries of loans subsidies, number of housing units, constructed or renovated etc.), and little concrete evidence has been provided that sufficient action has been taken or that measurable progress has been made in the field of housing for Roma. The Committee asks that the next report provide detailed information on the data collected in the framework of the Strategy for Roma Equality, Inclusion and Participation 2021-2030 and on the implementation of the Strategy. The Committee also asks that the next report provide updated information on legal developments in the field of eviction.

According to another source, there is no national/regional homeless data-collection strategy. Several cities and regions carry out surveys, but there is no uniform methodology and data is not comparable (see Country Profile 2020 at www.feantsa.org).

The Committee notes that according to the Opinion on the Czech Republic visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted on 31 May 2021 (§§169, 172), Roma people have benefitted from the implementation of grant programmes to improve the living conditions of Roma, in particular to move residents of “residential hostels” to adequate social housing. The Committee also notes that despite this, there are indications of continued discrimination of Roma in the housing market, as field workers dealt with cases of alleged discrimination, where Roma faced insufficient availability of vacant flats, high (refundable) deposits and excessive rents, or the unwillingness of landlords to rent flats to Roma families. Only a limited number of Roma have moved from “residential hostels” to adequate social housing and that, despite some progress, many Roma still live under substandard living conditions and suffer discrimination in the housing market (see Opinion on the Czech Republic visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted on 31 May 2021, §§169, 172, <https://rm.coe.int/5th-op-czech-republic-en-restricted/1680a2b3d6>”). On this basis, the

Committee considers that the available evidence points to there still being insufficient access to housing of Roma who also face poor housing conditions, territorial segregation and forced evictions.

Therefore, the Committee holds that the situation has not been brought into conformity with Article 16 of the 1961 Charter.

B. On the right to health – Article 11

The Committee takes note of the measures taken by the Government. Despite this, the report does not provide information on the implementation and the effectiveness of the innovation policies concerning health care accessibility for Roma people living in social exclusion. The Committee therefore reiterates its previous finding that there is evidence that Roma communities, in many cases, continue to live in unhealthy environments and thus the requirements of Article 11§§1, 2 and 3 of the 1961 Charter in light of the Preamble are not satisfied.

The Committee takes note of the measures planned for the upcoming years as regards the right to health and asks that the next report provide detailed information on their implementation. It reiterates its previous finding that more needs to be done to ensure that Roma families are not harmed by their environment and enjoy adequate access to health care and to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions.

The Committee considers that the situation has not been brought into conformity with Article 11 of the 1961 Charter.

1st Assessment of follow-up: Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, Resolution CM/ResChS(2018)9

1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found that there was a violation of the right to protection of health under Article 11§1 of the 1961 Charter on the ground that transgender persons seeking to have their gender identity recognised in their personal documents are legally required to undergo medical sterilisation, considered to constitute medical treatment without informed consent in the circumstances of the case.

2. Information provided by the Government

The Government describes the reflection process aimed at identifying the optimal modalities for implementing the present decision on the merits. As a result of that process, the Ministry of Justice presented a draft bill in June 2018 that would have removed medical sterilisation as a mandatory requirement for the purposes of legal gender recognition. The report notes that the Ministry of Interior criticised the draft bill on the grounds that, among others, it would allow legally male persons to give birth or that it would allow repeated gender reassignments. As a result of such criticism, the process of adopting the bill has been blocked at inter-ministerial level.

The Government also describes a legal gender recognition case involving a transgender woman who challenged the sterilisation requirement, which was taken before the Constitutional Court, where it was pending at the time when the report was finalised. In this case, the Supreme Administrative Court had rejected the claim on the grounds that Czech society still insists on the binarity of gender, on strict rules for gender reassignment, and that the choice between recognition and physical integrity forced on transgender persons in this context is reasonable and proportionate.

Lastly, the Government states that a draft “Government Strategy for equality and removing barriers to a life in dignity for LGBTI+ people in the Czech Republic 2021-2026” has been presented for adoption in Parliament. The Strategy includes an action line on “the abolition of the requirement of medical operations and sterilisation for legal gender reassignment” with a proposed implementation deadline by December 2022. However, the strategy had not yet been adopted at the time of finalising the report.

3. Assessment of the follow-up

The Committee notes that on 31 March 2022, a “relevant minority” of the Czech Constitutional [Court](#) rejected the above-mentioned challenge to the sterilisation requirement (Pl. ÚS 2/20). Notably, the Constitutional Court ignored the present decision on the merits, while also stating that it “has considerable doubts about the transferability of some of the conclusions of the European Court of Human Rights to the environment of the Czech legal system.” In making this statement, the Constitutional Court referred mainly to the *A.P., Garçon and Nicot v. France* judgment, in which the European Court of Human Rights (ECtHR) ruled that the sterilisation requirement was in breach of the right to respect for private life under Article 8 of the European Convention on Human Rights (see analysis in *Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§ 83-84*).

In this context, the Committee refers to European Commission on Racism and Intolerance (ECRI) [report](#) on the Czech Republic published in 2020, which cites evidence of disrespectful

attitudes towards transgender persons in healthcare institutions and of an overly medicalized approach by health care staff to their situation. It was further reported that transgender persons often felt treated as sick persons due to their gender identity, instead of being fully accepted. As a result, ECRI strongly encouraged the relevant health authorities to remind all health care workers to treat transgender persons with the necessary dignity and respect for their gender identity.

As spelled out in the above-mentioned Committee of Ministers resolution, the means for implementing the present decision on the merits are clear – it is necessary to amend the relevant regulations in order to remove the requirement to undergo medical sterilisation or any other surgical procedures as a pre-requisite to legal gender recognition. The Committee welcomes the fact that the Government shares this analysis, as is apparent in its report. Nonetheless, the Committee also notes that the assessment provided in the report makes it clear that achieving the goal of amending the relevant regulations has been rendered considerably more difficult by persistent misunderstandings around the legal gender recognition procedure and by persistent prejudice towards transgender persons. In this context, the Committee would point out that, if anything, since the present decision on the merits has been handed down, the consensus against surgical requirements for the purposes of legal gender recognition in Europe has strengthened. Thus, the ECtHR has noted in 2021 that legal gender recognition without any surgical pre-requisites was possible in a majority of Council of Europe Member States – 26 (*X and Y v. Romania*, Nos. 2145/16 and 20607/16, § 84-88, 19 January 2021).

In light of the above, the Committee invites the authorities to keep it informed of the measures taken with a view to dispelling the misunderstandings around legal gender recognition, taking into account Council of Europe guidelines and best international practice, as well as to combating the negative stereotypes around gender identity among legal professionals, medical healthcare staff, and politicians, that have informed public debate on these matters to date. The Committee also asks for information on the progress recorded with respect to adopting the requisite legal amendments on legal gender recognition.

In the meantime, the Committee considers that the situation has not been brought into conformity with Article 11§1 of the 1961 Charter.

1st Assessment of follow-up: University Women of Europe (UWE) v. the Czech Republic, Complaint No. 128/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)5

1. Decision of the Committee on the merits of the complaint

A. Violation of Article 4§3 of the 1961 Charter and Article 1.c of the 1988 Additional Protocol to the 1961 Charter

In its decision, the Committee concluded that there was a violation of Articles 4§3 of the 1961 Charter and Article 1.c of the 1988 Additional Protocol on the ground that pay transparency was not ensured and job comparisons were not enabled in practice.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter

In its decision, the Committee concluded that there was a violation of Article 1.c of the 1988 Additional Protocol on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

C. Violation of Article 1.d of the 1988 Additional Protocol to the 1961 Charter

In its decision, the Committee concluded that there was a violation of Article 1.d of the 1988 Additional Protocol on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies.

2. Information provided by the Government

A. Violation of Article 4§3 of the 1961 Charter and Article 1.c of the 1988 Additional Protocol to the 1961 Charter

The Committee observes that on 8 March 2021, the Government adopted the new Gender Equality Strategy for 2021–2030 (the Strategy). According to the Government, the drafters of the Strategy took into account the decisions of the Committee in *University Women of Europe v. the Czech Republic*.

According to the Government, the Strategy addresses the issue of pay transparency in Chapter 1 “*Work and care*”, by including a specific objective on *Raising the level of wage and pay transparency*, which aims at reducing the gender pay gap from 15.70% to 10% by adopting several measures, such as, among others, declaring null and void any legal act consisting of negotiating a non-disclosure clause in which employees commit to confidentiality regarding their wage/pay. According to the Strategy, this measure will be implemented by submitting to Parliament an amendment to the Labour Code by 31 December 2022, expressly prohibiting the negotiation of confidentiality clauses. Another measure is to continue to monitor and keep anonymous statistics on the average pay of (state) employees in individual pay grades by gender in the period from 31 December 2021 to 31 December 2030. Another relevant measure is ensuring that trade unions will be informed about the evolution of salaries or wages broken down by gender which necessitates an amendment of the Labour Code, providing that employers are under an obligation to inform trade unions about the evolution of average wage or salary and the individual components thereof, also broken down by gender. The Labour Code amendment is due to be submitted to Parliament by 31 December 2023.

According to the Government, the Czech Republic is actively participating in negotiations over the Pay Transparency Directive, which the European Commission presented in March 2021.

In the draft directive, the whole of Chapter II “*Pay transparency*” is devoted to the issue of pay transparency. The most relevant provisions in terms of implementing the ECSR decision are Article 7 (*Right to information*) and Article 8 (*Reporting on pay gap between female and male workers*). The Government states that the Czech Republic supports the draft directive.

The Committee further notes that the Government is finalising the Action Plan for Equal Pay. The Action Plan is made up of six parts, and one part is devoted to the issue of pay system transparency. The working version of the Action Plan includes a series of objective and measures, such as informing trade unions about pay rates for women and men, as well as raising awareness among employees about equal pay.

According to the Government, the overall objective is to enable employees to obtain pay information via their representatives or via the body for equal treatment (the Ombudsman) or a monitoring body. Alternatively, employers may provide information every year on average pay rates broken down by gender in the individual categories (equal work and work of equal value) to all employees. Employers may require employees not to use this information for purposes other than promoting the principle of equal pay for equal work or work of equal value and not to disseminate the information further. The measure is based on Articles 7 and 26 of the draft Pay Transparency Directive.

The Government also provides information about *Logib*, which is a self-testing tool (software) for conducting equal pay analysis and is intended for employers in the private and public sectors. *Logib* works with data from the organisation’s salary or wage (pay) system and is reliable for workforces of over 50 employees. Using *Logib*, employers can check for themselves how pay has been set up in their organisation without having to share sensitive data with anyone.

As regards comparisons outside company, the Committee takes note of the information concerning the decisions of domestic courts, who have considered a case concerning pay discrimination against employees based on their place of work. It involved a situation where drivers of the *Česká pošta* postal service in Prague were better paid than drivers elsewhere. The case did not involve gender-based discrimination, but, according to the Government, it is an important piece of domestic case law in the area of broadening the comparison of jobs for the purposes of considering pay discrimination across regional branches of one and the same company.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter

The Committee notes that the Gender Equality Strategy for 2021-2030 (the Strategy) is the Government’s framework document for the implementation of gender equality policy in the Czech Republic. The aim of the Strategy is to formulate a framework for state administration measures that will contribute to achieving gender equality in the Czech Republic. The purpose of these measures is to develop the positive changes that have been achieved in some areas of gender equality and to counter negative trends that have persisted or are growing in this area.

According to the Government, an integral part of the Strategy is its connection to policies implemented or coordinated at EU level. The Strategy is also closely linked to human rights obligations arising from international treaties and the respective monitoring bodies, including the Charter and the ECSR. Furthermore, the Strategy follows up on some recommendations of international organisations. An emphasis will be placed on the cooperation and sharing of information between the state administration, local governments, social partners and academic workplaces and non-governmental organisations. For the purpose of reflecting current changes in society and in legislation and also in connection with the evaluation of the Strategy, two reviews will take place during the course of the validity of the Strategy.

The Government also provides information about the grant programmes. The Ministry of Labour and Social Affairs is drawing up a system of support grants under the Employment Plus Operational Programme. The system is based on the Strategy and it takes account of data on equal opportunities in the private sector in the Czech Republic and across the entire region of central and eastern Europe. In the long term, it is seeking to reduce the gender pay gap on the Czech labour market.

The financed projects will undergo unified evaluation of initial, interim and final states. According to the Government, it will thus be possible to determine whether any shift has taken place in the areas addressed during project implementation. The evaluation will place particular emphasis on “awareness of the issue” at specific organisations and acceptance of the proposed solutions by both employees and management.

The grants to promote equal opportunities also include support for diversity, flexibility and inclusion on the labour market. In this area, support will go to:

- piloting and evaluating measures to reduce gender segregation in fields of study, the broadening out of which will in the long term lead to less horizontal segregation of the labour market;
- introducing flexibility and the management of maternity and parental leave into corporate processes and corporate culture with the aim of enabling, at a company level, a work-life balance for all employees and also, through changes in corporate culture, allowing men to play a greater role in caregiving. The measures were introduced in response to a sharp drop in employment and an associated drop in income particularly for women caring for young children. The aim of the measure is to set up mutually beneficial cooperation between employers and parents who are on maternity or parental leave and to enable parents to return to work quickly and without any problems;
- changes to corporate culture and processes with a view to increasing gender diversity and work team inclusivity. Employers will create the conditions for increasing the number of women in their company’s management by analysing the initial situation in the company, adapting their processes – especially in the field of recruitment, appraisal and career development – and emphasising an inclusive work environment, thereby eroding vertical segregation at the company over the long term and, ultimately, on the labour market.

The Employment Plus Operational Programme will also fund educational and awareness-raising projects focusing on the private sector and aimed at collecting anonymised data on the gender-based problems addressed and actively involve businesses in supporting pay transparency and flexibility in the work environment, including gender diversity and inclusion.

The Government also provides information about an education and awareness-raising campaign. The objective of this campaign is to influence a broad range of target groups and draw attention to the complexity of the gender pay gap issue. The campaign also seeks to raise awareness of this phenomenon and to make it more visible in society. It aims to mobilise the target groups in order to reduce the gender pay gap and increase pay transparency. The campaigns implemented to date helped to establish constructive cooperation with various actors and to positively influence public opinion.

C. Violation of Article 1.d of the 1988 Additional Protocol to the 1961 Charter

According to the Government, the Gender Equality Strategy includes a strategic objective in Chapter 2 “*Decision-making*”, on increasing the representation of women in decision-

making positions. One important specific objective is specific objective No. 1.5 *Increasing the representation of women in statutory bodies and upper management of corporations*, which includes the following measures:

- ensuring through methodological support and updating of the relevant manual that companies inform on implementation of their diversity policy in line with Act No 256/2004, on capital market undertakings, including identifying good practice;
- submitting to the government, by the end of 2023, amendments to the Nomination Act and the Business Corporations Act which introduce a provision to promote the equal representation of women and men in the management and supervisory bodies of business corporations;
- organising workshops for the Nominating Committee and nominating ministries on the issue of equal representation of women and men in decision-making positions representing the state on the supervisory boards of corporations with a state ownership interest;
- carrying out awareness-raising activities attended by business corporations with a state ownership interest and private companies in order to share good practice and promote cooperation; and
- issuing specific calls under the specific objective of Operational Programme Employment+ for the application of diversity in the workplace and support for the balanced representation of women and men in corporations. The calls will serve as one of the tools for combating discrimination and vertical and horizontal segregation on the labour market, and for promoting a better work-life balance, including sufficient capacity of available childcare services.

The Government also states that at a meeting of the Committee for balanced representation of women and men of the Government Council for Gender Equality, a discussion was initiated with the Ministry of Justice with a view to adopting legislative changes to promote the balanced representation of women and men in governing (statutory) bodies and senior management of commercial companies. It was agreed that support for the gender balance among management and supervisory bodies under the Business Corporations Act would be a part of a broader legislative amendment also addressing other measures set out in the Strategy. A working group comprised of representatives of the Committee, the Office of the Government and the Ministry of Justice is currently being formed in order to prepare the legislative work.

3. Assessment of the follow-up

A. Violation of Article 4§3 of the 1961 Charter and Article 1.c of the 1988 Additional Protocol to the 1961 Charter

As regards pay transparency, in its decision the Committee observed that employers were not entitled to publish pay data of their individual workers. An exception was the obligation to provide data for statistical purposes. The Committee considered in this respect that the lack of pay transparency did not help shed light on the reasons for pay inequalities and may become a major obstacle for victims of pay discrimination to prove discrimination and thus effectively enforce their rights. Therefore, access to general statistics is not sufficient for an individual to identify a possible breach of the equal pay principle. In the context of judicial proceedings, it should be possible to request and obtain information on the pay of a fellow worker.

The Committee takes note of the information provided by the Government in reply to the Committee of Ministers' Recommendation CM/RecChS (2021)5, in which the Committee of Ministers recommends that the Czech Republic pursue and finalise the adoption of measures to improve pay transparency by means of entitling workers to request and obtain, in the context

of judicial proceedings, information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.

The Committee notes in particular that the new Gender Equality Strategy envisages a series of measures to promote pay transparency and enable employees to obtain pay information. The Committee notes that some legislative initiatives are underway concerning the confidentiality clauses. However, the Committee notes from the European Network on Legal Experts on Gender Equality and Non-Discrimination (Country report on the Czech Republic, 2022) that wage transparency is still one of the weaknesses of Czech legislation. There is no obligation of the employer in this regard, moreover, there are still many employment contracts under which workers are obliged not to divulge information about their salary.

As regards outside company comparisons, in its decision the Committee found that the scope of comparisons in the private sector was restricted to a single enterprise and did not extend to companies owned by the same person or controlled by a holding or a conglomerate. It considers that the obligation to expand the scope of pay comparisons in the private sector beyond the same enterprise has not yet been fully implemented.

Therefore, the Committee considers that despite the progress made and the measures that have been announced and are on-going, the situation concerning pay transparency and job comparisons has not yet been brought into conformity.

B. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter

The Committee takes note of the information provided by the Government in reply to the Committee of Ministers' Recommendation CM/RecChS (2021)5, in which the Committee of Ministers recommended that the Government review and reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect.

The Committee notes in particular that the Gender Equality Strategy and Action plan contain a series of measures aiming at reducing the gender pay gap. The Committee takes note of the initiatives underway in the framework of the Employment Plus Operational Programme and the grants programmes. The Committee considers that these measures represent a reinforced action to reduce the gender pay gap. The Committee notes in this regard from Eurostat that the unadjusted pay gap has fallen from 19.2% in 2019 to 16.4% in 2020. The Committee observes that the pay gap has been steadily decreasing since 2015. However, the Committee considers that the pay gap remains at a high level, above the EU-27 average.

Therefore, the Committee considers that there has not been sufficient measurable progress and therefore, the situation has not been brought into conformity.

C. Violation of Article 1.c of the 1988 Additional Protocol to the 1961 Charter

In its decision the Committee observed from the European Institute for Gender Equality (EIGE) that in 2017 the share of women on boards of largest listed companies for the Czech Republic stood at 14.5% and for the EU at 25.3%. In 2019 these figures stood at 18.5% and 27.8% respectively. The Committee considered that despite the progress made in promoting the representation of women in decision-making positions in private companies, the latter remained low and therefore the measures that have already been implemented had not been sufficient.

The Committee takes note of the measures initiated by the Government with a view to promote an effective parity in the representation of women and men in decision-making positions of the largest publicly listed private companies. It notes that these measures are part of the

Government's Gender Equality Strategy and Action Plan. It notes that in the first quarter of 2022 the share of women in decision-making positions in largest listed companies has risen to 21.3% (the EU average stood at 32.2%).

The Committee notes that despite the progress made, the share of women in decision-making posts remains low and it considers therefore, the situation has not been brought into conformity with the 1961 Charter.

THE NETHERLANDS

4th Assessment of follow-up: European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, Resolution CM/ResChS(2015)4

1. Decision of the Committee on the merits of the complaint

A. Violation of Article 31§2

In its decision, the Committee found that there had been a violation of Article 31§2 on the grounds that the legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness and that the quality and quantity of shelters available to vulnerable groups do not fulfill the requirements of the Charter.

B. Violation of Article 19§4c

The Committee also found a violation of 19§4c on grounds there is no right to appeal in matters concerning the accommodation of migrant workers and their families.

C. Violation of Article 30

Lastly, the Committee found a violation of Article 30 on the grounds of failure to provide shelter leading to poverty and social exclusion and of an insufficient coordination between the responsible authorities.

2. Information provided by the Government

A. Violation of Article 31§2

The report indicates that in response to the figures published by Statistics Netherlands (CBS) on the number of homeless people in the Netherlands in 2018 (39,000), the Government introduced additional measures to reduce these numbers. In 2020, the central Government launched a plan entitled '*A Home, a Future*' and supplemented the existing budget for shelters in the community by €200 million intended for preventing homelessness, transforming shelters and increasing assisted housing capacity. The report further states that the results of these efforts are tracked in an extensive monitor, with municipalities providing figures on the number of homeless people, shelter capacity and various qualitative indicators, such as the conversion of dormitories in shelters to rooms for one or two people. The report indicates that the Ministry of the Interior and Kingdom Relations has also made funding available to house vulnerable groups, including the homeless.

According to the CBS, the number of homeless people decreased from 39,300 in 2018 to 32,000 in 2021.

The report further indicates that during the Covid-19 pandemic, additional measures have been taken to provide safe shelter for homeless people. Institutional shelters have been adapted in line with the 1.5-metres distancing rule and made as accessible as possible. As a result, municipalities were able to accommodate hundreds of additional people during lockdown.

B. Violation of Article 19§4c

The report provides no information on this point

C. Violation of Article 30

The report provides information on the measures taken to reduce homelessness and figures regarding the number of homeless people (see above under Article 31§2).

The report provides no information on coordination efforts between the authorities.

3. Assessment of the follow-up

A. Violation of Article 31§2

The Committee takes note of the positive measures and efforts taken by the authorities to reduce the number of homeless people, in particular the plan “A Home, A Future” and the additional funding of €200 million allocated to preventing homelessness, transforming shelters and increasing assisted housing capacity.

It also notes that the data provided by Statistics Netherlands show that the number of homeless people decreased between 2018 and 2021.

The Committee further notes that *Valente*, an association for participation, guidance and safe shelter, questions this decrease. According to the association, many invisible homeless people in the Netherlands are not included in the estimates. These include adults and young people who temporarily leave home due to tension or domestic violence. Older people over 65 are not included in the CBS figures. This also applies to children under the age of 18 whose parents become homeless. *Valente* reports that social care sheltered 1,650 underage children with their parent in 2020. The same association further reports that shelters are overcrowded and that reception organisations report a constant stream of people knocking on the door of the reception centre because they have no roof over their heads.²

While taking note of the positive measures carried out and initiated by the Government as well as the decrease in the number of homeless people, the Committee considers that the number of registered homeless people is still high (32,000 in 2021) and information from practice seem to indicate that shelters are overcrowded.

In light of these considerations, the Committee finds that the situation has not been brought into conformity with Article 31§2 of the Charter.

It invites the Government to continue its efforts with a view to remedying the violation and asks that information be provided in the next report on the implementation of measures on preventing/reducing homelessness and improving the quality and quantity of shelters available to vulnerable groups, as well as updated statistical data on the number of homeless people.

B. Violation of Article 19§4c

In its previous assessment on the follow-up to this decision, the Committee noted that there was no information on this issue in the report and asked the next report to provide information on the right to appeal in matters concerning access to shelter of migrant workers and their families (Findings 2019).

The report provides no information on this point. In view of the absence of information, the Committee finds that the situation has not been brought into conformity with Article 19§4c the Charter.

² [Dakloosheidscijfers roepen vragen op - Vereniging Valente](#)

C. Violation of Article 30

In its decision on the merits, the Committee considered that in light of the findings made under Article 31§2, it followed that the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not offered shelter, leading to poverty and social exclusion (decision on the merits, §229). The Committee also found that the coordination between the responsible authorities was insufficient for the purposes of Article 30 (decision on the merits, §230).

The report provides no information on coordination efforts between the authorities.

The Committee takes note of the information on the measures taken to reduce homelessness and figures regarding the number of homeless people provided in the report (see above under Article 31§2).

On the basis of the information available to it, in particular the high number of persons remaining homeless, the Committee is still unable to conclude that access to a shelter, including a shelter for the homeless, for the purpose of preventing homelessness is ensured and that the quality and quantity of shelters available to vulnerable groups fulfill the requirements of Article 30 the Charter concerning the right to protection against poverty and social exclusion.

The Committee finds that the situation has not been brought into conformity with Article 30 of the Charter.

1st Assessment of follow-up: University Women of Europe (UWE) v. the Netherlands, Complaint No. 134/2016, decision on the merits of 6 December 2019, Recommendation CM/RecChS(2021)11

1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the following grounds:

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency was not ensured, in particular because individual workers most often do not have full access to relevant data concerning pay in their workplace and that domestic law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions.

B. Violation of Articles 4§3 and 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Committee also considered that there was a violation because there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

2. Information provided by the Government

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

The report refers to the Committee of Ministers CM/RecChS(2021)11 and points to the need to “pursue and finalise the adoption of measures to improve pay transparency taking into account parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions”. It noted that in March 2021, the European Commission presented a proposal to improve pay transparency and strengthen enforcement mechanisms. This proposal includes the workers’ right to information and a reporting obligation for employers with at least 250 employees. The Government considers that this proposal is largely positive and that coordinated action at European level to promote equal pay and pay transparency can help enforce the fundamental right to equal pay throughout the EU and will also ensure a similar level of protection for workers across the EU. The proposal still needs to be agreed by the European Parliament.

Furthermore, a bill requiring that employers report on the scale of pay disparities between their male and female workers is currently being debated in the Dutch House of Representatives. This bill also requires that companies with 250 or more employees must obtain a certificate showing that they provide equal pay to men and women.

The report also gives details of a study that is expected to start in early 2022 that researches how the value of work is determined, what parameters are used in the process and what best practices can be shared.

In addition, before the above-mentioned European legislation is fully drafted and implemented, efforts will be made, in consultation with the stakeholders involved such as employers’ organisations and trade unions, to support employers and workers in developing and applying methods and tools to promote pay transparency with a view to reducing pay disparities.

B. Violation of Articles 4§3 and 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Government is fully aware of the need to further reduce and eventually eliminate the gender pay gap. According to the latest national data from 2018, the unadjusted pay gap between men and women that year was 19% in the private sector and 8% in the public sector. Adjusting the data for various background characteristics known to influence pay, the gap in 2018 was 7% and 4%, respectively. Over the years since 2008, there has been a downward trend in both the unadjusted and adjusted pay gap, but progress has been slow. Various measures have been and continue to be taken to encourage women to voluntarily extend their working hours. As mentioned previously, this includes extending partner leave after the birth of a child, investing in childcare, reducing the tax burden on income from work, applying the existing Flexible Working Arrangements Act and conducting awareness-raising campaigns. In addition, the Paid Parental Leave Act was passed by both chambers of Parliament in 2021 and will enter into force in August 2022.

Another factor that contributes to the different labour market position of men and women is the fact that men are more often employed in senior positions or in sectors where the salaries are higher. Fewer women are promoted to senior posts in either the public or the private sector. The Government therefore put forward a bill setting quotas for supervisory boards of listed companies, which must comprise at least one-third female and one-third male members. If this is not yet the case in a company, any new board appointment that does not contribute to gender balance will be null and void. Large companies will also have to set appropriate and ambitious gender balance targets for senior and upper management, be transparent about these targets and draw up a plan outlining how and when they will achieve them. This data will be published on a website the Social and Economic Council is currently developing. The bill was passed by both chambers of Parliament in 2021 and will enter into force on 1 January 2022.

Efforts to promote equal pay for work of equal value are part of the Government's 2018-2021 Action Plan on Labour Market Discrimination and various targeted measures have already been taken or are planned. On 21 September 2020, for instance, the Labour Foundation (the national consultative body of central organisations of employers and employees) published its digital guide to equal pay for men and women, in which it provides background information and guidance to help promote equal pay. It is intended for various target groups in the business community. The Recruitment Code (*Sollicitatiecode*) of the Dutch Network for HR Professionals (NVP) also contributes to closing the gender pay gap and is designed to prevent – often unintentional – labour market discrimination and reduce pay disparities. The purpose of this Code is to set a standard for a transparent and fair recruitment and selection process.

3. Assessment of the follow-up

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

The Committee notes from the report that it refers to new developments under EU law which are under way, as well as to a bill requiring that employers report the scale of pay disparities between their male and female employees, which is currently being debated in the Dutch House of Representatives. Efforts will be made to support employers and employees in developing and applying methods and tools to reduce pay disparities and share best practices. The Committee takes note of the measures, which are under way.

However, in the light of the information submitted, the Committee reiterates its invitation to the authorities to pursue further the measures adopted in order to ensure that pay transparency

is guaranteed in practice, by allowing individual workers to have full access to relevant data concerning pay in their workplace and laying down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions.

In the meantime, the Committee considers that the situation has not been brought into conformity with the Charter.

B. Violation of Articles 4§3 and 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Committee notes the reforms undertaken to legally enforce representation quotas in the upper management of companies. The Committee also takes into account that new legislation has been adopted, both on setting quotas for supervisory boards of listed companies (the legislation was passed by both houses of parliament in 2021 and entered into force on 1 January 2022) and on Paid Parental Leave Act (entry into force in August 2022).

However, the report also acknowledges that progress is slow and that it is necessary to continue working to reduce further the adjusted and unadjusted gender pay gap.

The Committee acknowledges that the gender pay gap in the Netherlands is 14.2%, according to the data of EUROSTAT for 2020. The report further states that in 2018, while the gender pay gap in the public sector was 8%, in the private sector it was 19%, which is too high.

On the basis of the information at its disposal, and despite the progress made, the Committee therefore considers that the situation has not yet been brought fully into conformity with the Charter as regards the lack of sufficient measurable progress in reducing the gender pay gap.

NORWAY

1st Assessment of follow-up: University Women of Europe (UWE) v. Norway, Complaint No. 135/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)12

1. Decision of the Committee on the merits of the complaint

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the ground that job comparisons are not enabled, as domestic law restricts the scope of job comparisons and they are not possible across companies, even where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

B. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

In its decision, the Committee concluded that there was a violation of Article 20.c of the Charter on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

2. Information provided by the Government

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons

The report refers to the fact that the European Commission in March 2021 submitted a proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay between women and men for equal work of equal value through transparency on pay and enforcement mechanisms. The proposal will be considered and adopted by the European Parliament and the Council and if the directive is adopted, it could lead to legislative changes, either in the Equality and Anti-Discrimination Act or in other national legal regulations. The Government will await the directive proceedings in the EU, before considering changes in national law according to the decision of the European Committee of Social Rights.

B. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The report states that the Norwegian Equality and Anti-Discrimination Act was strengthened in 2020. All employers in public enterprises, and employers in private enterprises with more than 50 employees, now have a statutory duty to carry out wage surveys within the enterprise every other year. Furthermore, all employers in public enterprises, and employers in private enterprises with more than 50 employees, are obliged to map wage differences by gender within their own enterprise every other year. This also applies to employers in private enterprises with between 20 and 50 employees, if one of the social partners in enterprises so requires. If the survey shows wage differences between the sexes in the company, the employer must assess whether this is due to discrimination and must also implement measures to prevent discrimination in remuneration and evaluate the results of the measures. Employers who are required to carry out such a wage survey are obliged to publish the results of the wage survey in their gender equality report. In addition to this, the company's employees

and the Equality and Anti-Discrimination Ombudsperson are also entitled to access the company's documentation on gender equality measures.

No further information is submitted as regards the gender pay gap.

3. Assessment of the follow-up

A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons

The Committee notes that the Government will await the possible adoption of an EU directive on pay transparency before making any necessary legislative changes concerning job comparisons.

The Committee encourages the adoption of specific measures to enable job comparisons across companies and considers, in the light of the information at its disposal, that the situation has not been brought into conformity with the Charter on this point.

B. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

The Committee notes the reforms introduced in gender equality legislation, allowing for a better collection of data within small companies.

The Committee reiterates its invitation to the authorities to pursue further the measures adopted in order to promote equal opportunities between women and men in respect of equal pay and reduce further the adjusted and unadjusted gender pay gap. The Committee notes from EUROSTAT that the unadjusted gender pay gap in Norway in 2020 stood at 13.4%, so still above the EU average. It stood at 13.7% in 2017. In the Committee's view this cannot be regarded as sufficient measurable progress.

The Committee considers therefore that the situation has not yet been brought into conformity with the Charter on this point.

SLOVENIA

1st Assessment of follow-up: University Women of Europe (UWE) v. Slovenia, Complaint No. 137/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)14

1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the following grounds:

- A.** Access to effective remedies in respect of pay discrimination had not been ensured;
- B.** Pay transparency had not been ensured and job comparisons had not been enabled;
- C.** Insufficient measurable progress in promoting equal opportunities between men and women in respect of equal pay (Article 20.c).

2. Information provided by the Government

A. Access to effective remedies

The Government does not provide any information regarding the effectiveness of available remedies in the event of alleged pay discrimination.

B. Pay transparency and job comparisons

According to the Government, the legal framework of equal pay for men and women is fully in line with the EU standards. It is based on the definition of equal pay as an individual right of every worker. It covers both the public and private sectors and all workers, and refers to pay in its broadest sense, including all allowances and additional payments that an employee receives from his or her employer on the basis of an employment contract.

As to the confidentiality of information on the pay of individual workers, the Government refers to Article 38 of the Employment Relationships Act (ZDR-1), which regulates the protection of business secrets in connection with the establishment of unequal treatment. The ZDR-1 provides that a worker may not exploit for his or her personal use nor disclose to a third person the business secrets of his or her employer, as defined by the employer. In accordance with the Trade Secrets Act, the employer determines which business data may not be disclosed and, consequently, an employer in the private sector may designate as a business secret a specific salary of an individual employee.

However, according to the Government, the protection of the rights of workers in the event of pay irregularities cannot be limited by the establishment of a business secret, because the purpose of establishing a business secret must be to protect sensitive business data and not to conceal illegality. The worker may therefore disclose the amount of his or her pay and actual payments in order to verify the amount of the pay and possibly initiate judicial proceedings.

According to the Government, European law provides for a reverse burden of proof in cases of gender-based discrimination. Since employees usually do not have access to sufficient information required to succeed in a dispute (e.g. information on the pay of persons performing the same work or work of equal value), it is necessary to shift the burden of proof to the opposing party, i.e. the employer. The reverse burden of proof means that when the victim of discrimination states facts that justify the presumption of discrimination, the employer must prove that any possible gender pay gap is the result of objective factors that have no

connection with gender-based discrimination and correspond to real business needs and are necessary and appropriate to achieve the legitimate aim pursued. Through the employer's proof under the reverse burden of proof, a foundation is laid for the employee to be able to obtain all the relevant information in court proceedings that will fill in and further define the notion of equal work or work of equal value, and as well address the obtaining of information on comparable pay.

As regards information on the remuneration of individual employees and its comparability, Article 38 of the Public Sector Salary System Act provides that information on salaries in the public sector, such as information on positions, titles or functions, and on basic salaries, allowances and performance-related bonuses, are publicly available. In addition, individual data on the amount of the total gross salary of each individual public employee and for individual functionaries shall be made available to the public in accordance with the procedure regulated by the Public Information Access Act.

The Ministry of Public Administration shall be obliged to keep a record of the information on salaries and carry out an analysis in accordance with the prescribed methodology once a year and make it publicly available. In this context, the catalogue of positions, titles and functions should be mentioned, which includes all positions, titles and functions that exist in the Slovenian public sector. The catalogue is published on the website of the Ministry of Public Administration, which is responsible for the public sector pay system. For the purpose of consistently applying the principle of pay transparency in the public sector, the Public Sector Salaries Portal has been published on the website pportal.gov.si; it enables a comparison of salaries not only between budget users, individual activities and occupational groups, but also regarding all positions in the public sector.

In addition to the notion of pay, the notion of equal work and work of equal value is central to the application of the principle of equal pay for equal work and work of equal value. With regard to the recommendation of the Committee of Ministers that the Republic of Slovenia should clarify the notion of equal work or work of equal value in domestic law as necessary, either through legislation or case law, the Government states that both the European legislation and the legislation of most Member States, including the Republic of Slovenia, do not clarify these notions; the interpretation thereof is therefore left to the national courts, assisted by the Court of Justice of the European Union, which seeks to resolve through its case law the ambiguities inherent in the factors to be taken into consideration and in the criteria to be used for the assessment of equal and dissimilar work of the same value.

The Government states that it supports the objectives of the Directive of the European Parliament and the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (the Pay Transparency Directive), because it considers that the proposed Directive is of key importance for achieving gender equality and the right to equal pay for equal work or work of equal value for men and women, which is one of the fundamental principles enshrined in the Treaty on the Functioning of the European Union.

The proposal for the Directive aims at introducing pay transparency and payment structures to empower female and male workers and to eliminate the systemic undervaluation of women's work. Therefore, according to the Government, the Pay Transparency Directive is an important step towards realising the right to equal pay for equal work or work of equal value for men and women. Certain changes to national legislation will be necessary to implement the proposed Directive, but it is difficult to assess at this stage whether it will be more reasonable to incorporate them into a new legal regulation or to amend the existing legislation.

The Government maintains that the arrangements provided for by the Directive will be adequately implemented in the ZDR-1 and some of the obstacles to the implementation of the

Committee of Ministers Recommendation (Recommendation CM/REcChS(2021)14) will thus be eliminated.

C. Measurable progress in promoting equal opportunities between men and women in respect of equal pay

According to the Government, the competent ministries and other relevant stakeholders are taking various measures to promote gender equality in practice, including equal pay for men and women.

It is also highlighted in the report that a new Resolution on the National Programme for Equal Opportunities until 2030 was being prepared, with a particular focus on reducing the gender pay gap. Eliminating gender inequality in employment and ensuring the equal economic independence of women and men is one of the six thematic areas addressed in the Resolution, while reducing the gender pay gap and the gender pension gap is one of the key objectives in this thematic area. For the implementation of this objective, two measures are foreseen:

- the establishment of a legal framework to improve pay transparency and enforcement of the principle of equal pay for equal work and work of equal value and setting up relevant monitoring mechanisms to strengthen the effectiveness of legal protection in cases of infringements;
- the identification and elimination of the causes of the existence of the gender pay gap and the gender pension gap for the purpose of preventing the risk of poverty in old age. The draft Resolution is currently under consideration by the Government and is expected to be adopted by the National Assembly.

The Government states that concrete actions and measures to achieve the objective of reducing the gender pay gap and the gender pension gap, as set out in the Resolution, will be implemented on the basis of biennial periodic action plans. The first periodic plan will be adopted in 2022.

The Government states that the pay gap in the Republic of Slovenia has been increasing since 2010. However, it has decreased from 9.3% in 2018 to 7.9% in 2019.

The Government also refers to the project *Aktivni očka (Active Daddy)*, co-funded by the European Union. The main purpose is to contribute to raising awareness among (future) parents, employers, professional staff and the general public as to the importance of active fatherhood and a more equal sharing of parental care between partners. The general objective of the project is to reduce the deep-rooted causes of inequality that still exist between women and men, especially in relation to paid and unpaid work and the use of parental leave, and to enable people with caring responsibilities to better balance their work and family commitments.

In 2019, the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the European Social Fund co-financed the development of the Corporate Social Responsibility Certificate. The purpose thereof is to implement the best practices in the field of non-discrimination in the work environment, as well as the reconciliation of work and family life.

In addition, the Ministry of Labour, Family, Social Affairs and Equal Opportunities has co-financed, through a call for tenders, NGO projects aimed at reconciling one's private and professional life, with a focus on active fatherhood. In 2017, three projects addressing this issue were co-financed. In 2018, 2019, 2020 and 2021, the co-funded projects mainly raised awareness and addressed gender stereotypes in different areas.

In 2019, 2020, and in the first half of 2021, the project *Moje delo Moja pokojnina (My Work My Pension)*, initiated by the Ministry of Labour, Family, Social Affairs and Equal Opportunities and co-financed by the European Union under the Rights, Equality and Citizenship Programme, was implemented. Its aim was to raise awareness of the national pension system and the pension gap between women and men. As the pension gap is the result of the pay gap and other inequalities that accumulated during one's professional activity, the project also addresses and highlights the gender pay gap.

3. Assessment of the follow-up

A. Access to effective remedies

The Committee observes that the Government does not provide any information concerning measures taken to address the remaining obstacles in practice as regards making legal remedies in cases of gender discrimination effective in practice. Therefore, it considers that the situation as regards the obligation to ensure access to effective remedies has not been brought into conformity.

B. Pay transparency and job comparisons

In its decision the Committee held that the obligation to ensure pay transparency and to enable job comparisons had not been satisfied. The Committee considered in particular that there were several obstacles that rendered the right equal pay ineffective in practice, such as the absence of a clear definition of equal work and work of equal value and clear criteria for job classifications, as well as no indication that the scope of job comparisons could be extend outside the company directly concerned.

The Committee notes the Government's indication that sensitive business data, such as pay information may be disclosed at judicial proceedings by the worker initiating such proceedings and by the employer because of the shift in the burden of proof. The Committee also notes that Public Sector Salary System Act establishes a job classification system and ensures pay transparency. However, as regards the private sector and in particular the definition of equal work or work of equal value, creation of a clear jobs classification system, the Committee notes that the Government largely refers to the future Pay Transparency Directive of the European Union, which Slovenia fully supports and the implementation of which, according to the Government, will eliminate the remaining obstacles to the pay ensuring pay transparency and will enable job comparisons.

The Committee observes that the situation in the private sector where the pay transparency is not yet fully ensured and pay comparisons are not enabled due to the lack of definition of equal work and the absence of job classification systems, has not changed. Therefore, the Committee considers that the situation has not yet been brought into conformity.

C. Measurable progress in promoting equal opportunities between men and women in respect of equal pay

The Committee notes that the Government has continued to take measures to promote equal opportunities in respect of equal pay.

The Committee recalls that under Article 20.c the States Parties must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources

(International Association Autism-Europe (AIAE) v. France, Complaint No. 13/2002, decision on the merits of 29 September 2003, §53).

The Committee observes that the gender pay gap indicator has significantly declined since the Committee's last examination of the national situation. The gender pay gap stood at 9.3% in 2018, at 7.9% in 2019 and at 3.1% in 2020. The Committee considers that the sharp decline in the pay gap indicator represents measurable progress and considers therefore, that the situation is now compatible with the Charter in this respect.

SWEDEN

4th Assessment of follow-up: Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, Resolution CM/ResChS(2014)1

1. Decision of the Committee on the merits of the complaint

A. Violation of Article 6§2 of the Charter

In its decision, the Committee found that there was a violation of Article 6§2 of the Charter on the grounds that the restrictions and limitations imposed by law (i.e. Sections 5a and 5b of the Posting of Employees Act and Section 2 of the Foreign Branch Offices Act) did not promote the development of suitable machinery for voluntary negotiations between employers' and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

B. Violation of Article 6§4 of the Charter

The Committee also held that there was a violation of Article 6§4 of the Charter on the grounds that Sections 5a and 5b of the Posting of Employees Act, as well as Section 41c of the Co-determination Act, did not adequately recognise the fundamental right to collective action.

C. Violation of Article 19§4a of the Charter

In addition, the Committee found that there was a violation of Article 19§4a of the Charter on the grounds that in respect of remuneration and other working conditions, Swedish legislation (i.e. Sections 5a and 5b of the Posting of Employees Act) did not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

D. Violation of Article 19§4b of the Charter

Lastly, the Committee concluded that there was a violation of Article 19§4b of the Charter on the grounds that the lack of statutory provisions providing the requirement for foreign employers to appoint in Sweden a contact person entitled to negotiate and conclude agreements with Swedish trade unions did not secure for foreign workers lawfully within the territory of Sweden treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.

2. Information provided by the Government

In its report, the Government states that in April 2020, it submitted a parliamentary bill to transpose into Swedish law the European Union Directive 2018/957 amending Directive 96/71/EC on the posting of workers.³ The bill⁴ proposed legislative amendments to create a more level playing field for posted workers and local workers and enhance protection for posted workers. It also sought to introduce stricter reporting requirements as regards the posting of workers. Parliament voted in favour of the Government's proposal in June 2020 and the legislative changes entered into force on 30 July 2020 (with some transitional provisions).

³ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

⁴ Bill 2019/20:150, More equal treatment and enhanced protection for posted workers

The Government provides a brief outline of these legislative amendments. Firstly, Swedish trade unions now have more scope for taking industrial action to push for the terms and conditions of employment of posted workers to be governed by collective agreements. Industrial action may be taken to bring about collective agreements governing posted workers' remuneration (as opposed to the minimum wage rate, as was the case until the legislative amendments came into force) and, where applicable, accommodation provided by the employer and allowances or reimbursement of expenditure to cover travel, board and lodging expenses (Section 15 of the Posting of Employees Act, as amended).

Secondly, protection for posted temporary agency workers has been enhanced, partly through the principle of equal treatment provided for in the Temporary Agency Work Act which must now be applied to posted temporary agency workers in Sweden (Section 8 of the Posting of Employees Act, as amended). This means that temporary agency workers posted to Sweden are entitled, *inter alia*, to the same remuneration as comparable workers of the user undertaking.

Thirdly, the protection of long-term posted workers has been strengthened. When workers have been posted for more than 12 months, employers must apply the statutory terms and conditions of employment applicable to equivalent workers in Sweden (Section 11 of the Posting of Employees Act, as amended). Swedish trade unions are also entitled, under certain conditions, to take industrial action to enforce terms and conditions of employment other than those which, under the Posting of Employees Act, may be enforced by industrial action against an undertaking posting workers to Sweden (Section 19 of the Posting of Employees Act, as amended).

Fourthly, service providers posting workers to Sweden are now subject to enhanced reporting requirements. Employers who post workers to Sweden must notify the Swedish Work Environment Authority and designate a contact person in Sweden from day one of the posting (Sections 29 and 32 of the Posting of Employees Act, as amended). They are also required to provide a document certifying that these reporting obligations have been fulfilled to the recipients of the services in Sweden. Should service providers fail to do so, the recipients of the services must inform the Swedish Work Environment Authority (Sections 30 and 31 of the Posting of Employees Act, as amended).

3. Assessment of the follow-up

A. Violation of Article 6§2 of the Charter

The Committee notes that, following the amendments to the Posting of Employees Act which came into force in 2020, Sections 5a and 5b have become Sections 15 (posted workers) and 16 (posted temporary agency workers) respectively. Under Sections 15 and 16 of the Act, Swedish trade unions now have more scope for taking industrial action to push for the terms and conditions of employment of posted workers to be governed by collective agreements. However, the nature and extent of the terms and conditions of employment that trade unions may demand are still limited: remuneration, travel, board and lodging expenses, accommodation or other minimum terms and conditions for posted workers (or other terms and conditions in the case of posted temporary agency workers).

The situation is more favourable only for long-term postings, i.e. those lasting more than 12 months: trade unions are entitled to take industrial action to have other terms and conditions of employment governed by collective agreements (with the exception of the terms and conditions for entering into and terminating employment contracts, including non-competition clauses, and supplementary occupational retirement pension schemes; Section 19 of the Posting of Employees Act).

The Committee also notes that industrial action under Sections 15, 16 and 19 may only be taken against employers based in the European Economic Area (EEA) or Switzerland (Section 2 of the Posting of Employees Act).

Moreover, the Committee notes that the wording of Section 2 of the Foreign Branch Offices Act has not been amended: foreign companies which conduct their economic activities in Sweden are not obliged to create a branch office with independent management in Sweden if the economic activity is made subject to the provisions on free movement of goods and services in the Treaty on the Functioning of the European Union or the corresponding provisions of the EEA Agreement. As a result, Swedish trade unions willing to conclude agreements with the above-mentioned foreign companies are forced to negotiate and conclude such agreements with the responsible employers abroad (see the decision on admissibility and the merits of 3 July 2013, §§113-114).

The Committee notes in this respect that under Sections 32 and 33 of the Posting of Employees Act, employers who post workers to Sweden must notify the Swedish Work Environment Authority and designate a contact person in Sweden. This contact person must be entitled to receive notifications on the employer's behalf and must also provide documents (e.g. employment contracts) showing that the requirements of the Posting of Employees Act have been met. The Committee asks whether the legislation requires employers who post workers to Sweden to appoint a representative who is entitled to negotiate and sign collective agreements.

The Committee considers that the amendments made in 2020 to the Posting of Employees Act are a step forward but do not go far enough to bring the situation into conformity with the Charter. In particular, it considers that the legislative restrictions and limitations described above do not promote the development of suitable machinery for voluntary negotiations between employers' and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

The Committee therefore considers that the situation has not yet been brought into conformity with Article 6§2 of the Charter.

B. Violation of Article 6§4 of the Charter

In its decision, the Committee noted that, under Section 41c of the Co-determination Act, collective action taken in violation of Section 5a and 5b of the Posting of Employees Act was unlawful, and trade unions acting in breach of the Posting of Employees Act had to pay compensation for any loss incurred (see Section 55 of the Co-determination Act), which constituted a disproportionate restriction on the free enjoyment of the right of trade unions to engage in collective action.

In this regard, the Committee notes that Section 41c of the Co-determination Act was amended in 2020 to take into account the new numbering of the sections of the Posting of Employees Act, but it still provides that "industrial action undertaken in violation of Sections 15, 16 or 19 of the Posting of Employees Act is unlawful".

The Committee points out that national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards, is not in conformity with Article 6§4 of the Charter, as it infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers (see the decision on admissibility and the merits of 3 July 2013, §120).

The Committee accordingly considers that the situation has not been brought into conformity with Article 6§4 of the Charter.

C. Violation of Article 19§4a of the Charter

The Committee notes that the statutory amendments to transpose into national law Directive 2018/957 (which requires that the remuneration of posted workers be equal to that of their colleagues in the host State for comparable work) entered into force in Sweden in July 2020.

Since then, posted workers in Sweden are entitled to the same remuneration as local workers in a comparable situation (see, in particular, Sections 8 (posted temporary agency workers) and 11 (workers posted for more than 12 months) of the Posting of Employees Act).

Given that as regards remuneration and other employment and working conditions, the legal framework now ensures that posted workers in Sweden benefit from the same treatment as local workers in a comparable position, the Committee considers that the situation has been brought into conformity with Article 19§4a of the Charter.

D. Violation of Article 19§4b of the Charter

As indicated in the above comments on the follow-up to the violation of Article 6§2 of the Charter, it is not clear from the information provided by the Government, in particular as regards Sections 32 and 33 of the Posting of Employees Act, whether the legislation requires employers posting workers in Sweden to appoint a representative who is entitled to negotiate and sign collective agreements. The Committee asks for this to be clarified.

In the meantime, the Committee considers that the situation has not been brought into conformity with Article 19§4b of the Charter on the ground that it has not been established that Sweden secures for foreign workers lawfully within its territory treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.