

04/03/2022

RAP/RCha/SVN/21(2022)

EUROPEAN SOCIAL CHARTER

21th National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF SLOVENIA

Follow-up to Collective Complaints

Report registered by the Secretariat on
3 February 2022

CYCLE 2022



REPUBLIC OF SLOVENIA

Twenty-first Report of the Republic of Slovenia
on the implementation of the European Social Charter (revised)

Simplified report

December 2021

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INTRODUCTION

The European Social Charter (Revised) (hereinafter: RESC) was adopted by the Council of Europe in 1996. The Republic of Slovenia signed the RESC on 11 October 1997; the Act ratifying the Charter was adopted by the National Assembly on 11 March 1999 (Official Gazette of the Republic of Slovenia [Uradni list RS] – International Treaties, No. 7/99); the instrument of ratification was deposited on 7 May 1999 and entered into force for Slovenia on 1 July 1999. With its ratification of the RESC, the Republic of Slovenia also undertook to supervise the fulfilment of obligations under the RESC in accordance with the procedure laid down in the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter: the Additional Protocol).

The University Women of Europe (hereinafter: UWE) is an international non-governmental organisation with headquarters in Geneva which on 24 August 2016 lodged a collective complaint against the Republic of Slovenia in accordance with Article 5 of the Additional Protocol. The UWE claimed that the Republic of Slovenia had violated Articles 1, 4 and 20 in conjunction with Article E of the RESC due to the existence of a gender pay gap and the under-representation of women in decision-making positions in private companies.

In line with the applicable reporting system, the Republic of Slovenia is required to submit a simplified report on the implementation of the European Social Charter (Revised). The simplified report contains a response and information on the activities of the Government of the Republic of Slovenia (hereinafter: the Government) with regard to the recommendations for Slovenia, adopted by the Committee of Ministers (*Recommendation CM/RecChS(2021)14*) on the basis of the established violations in the collective complaints procedure UWE v. Slovenia.

1 Activities of the Government in compliance with the recommendations of the Committee of Ministers in the collective complaints procedure UWE v. Slovenia

1.1 Background

The European Social Charter (Revised) (hereinafter: RESC) was adopted by the Council of Europe in 1996. The Republic of Slovenia signed the RESC on 11 October 1997; the Act ratifying the RESC was adopted by the National Assembly on 11 March 1999 (Official Gazette of the Republic of Slovenia [Uradni List RS] – International Treaties, No. 7/99); the instrument of ratification was deposited on 7 May 1999 and entered into force for Slovenia on 1 July 1999. With its ratification of the RESC, the Republic of Slovenia also undertook to supervise the fulfilment of obligations under the RESC in accordance with the procedure laid down in the **Additional Protocol to the European Social Charter** Providing for a System of Collective Complaints (hereinafter: the Additional Protocol).

The University Women of Europe (hereinafter: UWE) is an international non-governmental organisation with headquarters in Geneva, which is on the list of organisations with consultative status to the Council of Europe. On 24 August 2016, the UWE lodged a collective complaint against the Republic of Slovenia and all other signatory States to the Additional Protocol (a total of 15 countries), which regulates the collective complaints system. In accordance with Article 5 of the Additional Protocol, the UWE claims that Slovenia violated Articles 1, 4 and 20 in conjunction with Article E of the RESC due to the existence of a gender pay gap and the under-representation of women in decision-making positions in private companies. As per Article 5 of the Additional Protocol, the Secretary General informed the Republic of Slovenia thereof and forwarded the collective complaint to the European Committee of Social Rights (a committee of independent experts; hereinafter: the ECSR). In accordance with Article 6 of the Additional Protocol, on 27 September 2016 the ECSR called upon the Republic of Slovenia to submit its written observations in the procedure for establishing the admissibility of the collective complaint and to submit it to the ECSR.

At its 114th regular session on 14 December 2016, the Government adopted the Observations of the Republic of Slovenia based on Article 6 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in the procedure for establishing the admissibility of the collective complaint of the UWE against the Republic of Slovenia. In the Observations, it was stated that the UWE's complaint against the Republic of Slovenia was unclear and unfounded, as the complainant had failed to state in what respect the Republic of Slovenia had failed to ensure the satisfactory application of the relevant provisions of the RESC. Slovenian legislation is harmonised with the RESC, and statistical data reveal that the gender pay gap in the Republic of Slovenia is among the smallest in Europe and the world.

At its 293rd session on 4 July 2017, the ECSR declared the collective complaint lodged by the UWE against the Republic of Slovenia admissible and called upon the Republic of Slovenia to prepare its

observations on the content of the complaint. The Government adopted the Observations of the Republic of Slovenia at its 152nd regular session on 12 December 2017 on the basis of Article 7 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in the procedure for discussing the collective complaint of the UWE against the Republic of Slovenia. The Government of the Republic of Slovenia stated in its observations that the existing legislative framework, findings from the practice of the Labour Inspectorate of the Republic of Slovenia, the Human Rights Ombudsman of the Republic of Slovenia, the Advocate of the Principle of Equality and the courts, including implemented and planned activities of the Government aimed at realising gender equality in practice, cannot constitute violations of Articles 4 and 20 in conjunction with Article E of the RESC, and it thus proposed that the ECSR declare the collective complaint of the UWE against the Republic of Slovenia to be unfounded.

The ECSR called upon the UWE to respond to the Observations of the Government on the basis of Article 7 of the Additional Protocol. The UWE prepared a reply to the Observations of the Government on 12 January 2018. After receiving the reply of the UWE, the Government responded on 15 March 2018, and reiterated the arguments that had already been put forward.

On 28 February 2020, the Republic of Slovenia was informed of the decision of the ECSR, which with regard to the violations of the RESC decided as follows:

- a. As to the violation of the right to equal pay for equal work:
 - *There is no violation of the RESC in the legislation as regards recognition of the right to equal pay.*
 - *There is a violation of the RESC (Articles 4(3) and 20c), because access to effective remedies is not ensured.*
 - *There is a violation of the RESC (Articles 4(3) and 20c), because pay transparency has not been ensured and job comparisons have not been enabled.*
 - *There is no violation of the RESC as far as the equality bodies (the Ombudsman and the Defender) are concerned.*

- b. As to the promotion of equal opportunities for men and women with regard to equal pay:
 - *There is a violation of the RESC (Article 20c), due to insufficient measurable progress in this field.*

- c. As to women's representation in decision-making positions:
 - *There is no violation of the RESC (Article 20c) as regards measures to ensure a balanced representation of women in decision-making positions within private companies.*

In July 2020 the Republic of Slovenia submitted a written response to the alleged violations through the Permanent Representation of the Republic of Slovenia to the Council of Europe.

On 17 March 2021, the Committee of Ministers issued a Declaration on equal pay and equal opportunities for women and men in employment (*Decl (17/3/2021) 1*), addressed to all Council of Europe member States.

On the basis of the issued Declaration (*Decl (17/3/2021) 1*), the report and the findings of the ECSR on the violations of the RESC (Articles 4(3) and 20c) and the answers submitted by the Republic of Slovenia, the Committee of Ministers adopted the recommendation on 17 March 2021 (*Recommendation CM/RecChS(2021)14*) 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; strengthen pay transparency by 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;*
- *expand the scope of pay comparisons beyond the same enterprise;*
- *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 a reasonable time in this respect;*
- *indicate the decisions and actions taken to comply with this recommendation in the next report on the follow-up to decisions in collective complaints.*

1.2 Activities of the Government in compliance with the recommendations of the Committee of Ministers in the collective complaints procedure UWE v. Slovenia

Below we provide clarifications to the recommendations of 17 March 2021 received from the Committee of Ministers (*Recommendation CM/RecChS(2021)14*).

Recommendation: *clarify the notion of equal work or work of equal value in domestic law as necessary, either through legislation or case law; strengthen pay transparency by entitling workers to request and obtain, in the context of judicial proceedings, information on the pay of fellow workers while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.*

In the Republic of Slovenia, the principle of equal pay for men and women is directly regulated by the provision of Article 133 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia

[Uradni list RS], Nos 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – Constitutional Court Decision, 22/19 – ZPosS , 81/19, 203/20 – ZIUPOPVE and 119/21-ZČmIS-A), hereinafter: ZDR-1); this provision is closely connected with Article 6 of the ZDR-1, which generally regulates the prohibition of discrimination in employment relationships. The legal framework of equal pay for men and women is fully in line with the international regulation and the regulation of this issue in EU law. 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. In accordance with paragraph two of Article 133, the provisions of employment contracts and general acts that are contrary to the principle of equal treatment shall be deemed to be invalid.

Article 133 of the ZDR-1 does not define sanctions in the event of a violation of the principle of equal pay, but in the event of a violation, the employer is indirectly sanctioned on the basis of Article 6 of the ZDR-1, because a violation of the principle of equal pay also constitutes a violation of the general prohibition of discrimination. In the event of a violation of the prohibition of discrimination and the provision of equal pay, pursuant to Article 8 of the ZDR-1, the employer is liable to compensate the worker under the general rules of civil law. In a dispute where a victim of discrimination enforces his or her right to equal pay, the other rules set out in the general provision of Article 6 on the prohibition of discrimination, such as the rule on the reverse burden of proof and the prohibition of retaliatory measures or exposing the worker to unfavourable consequences as a result of their enforcement of rights, also apply.

As to the confidentiality of information on the pay of individual workers, Article 38 of the ZDR-1 which regulates the protection of business secrets should also be pointed out in connection with the establishment of unequal treatment. The ZDR-1 stipulates 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 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 22/19, hereinafter: the ZpoS) 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, 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.

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 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 108/09 – official consolidated text, 13/10, 59/10, 85/10, 107/10, 35/11 – ORZSPJS49a, 27/12 – Constitutional Court Decision, 40/12 – ZUJF, 46/13, 25/14 – ZFU, 50/14, 95/14 – ZUPPJS15, 82/15, 23/17 – ZDOdv and 84/18), hereinafter: ZSPJS) stipulates 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 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 51/06 - official consolidated version, 117/06 - ZDavP-2, 23/14, 50/14 and 19/15 – Constitutional Court Decision, 102/15 and 7/18; hereinafter: ZDIJS). The Ministry of Public Administration, taking into consideration Article 39 of the ZSPJS, 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 (paragraph two of Article 1 of the ZSPJS), the Public Sector Salaries Portal has been published on the website portal.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, it can be noted 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 Republic of Slovenia 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 (hereinafter: 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. We therefore believe that 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.

From the aspect of general labour law (ZDR-1), it will be necessary to examine the existing legislation from the aspect of the proposed Article 5 of the proposed Directive (pay transparency prior to employment), which in the initial proposal of the European Commission stipulates that an applicant for employment shall have the right to receive from a prospective employer information about the initial pay level or its range, based on objective, gender-neutral criteria pertaining to the position concerned. In accordance with the applicable ZDR-1 the relevant duty to inform is imposed for the period prior to the conclusion of the employment relationship, but not, for example, for the period before the interview. The arrangements adopted in the Directive will certainly be adequately implemented in the ZDR-1.

Under the Slovenian Presidency of the Council of the European Union (hereinafter: PSEU2021), the Republic of Slovenia was committed to ensuring that the discussion on the proposal for the Pay Transparency Directive went smoothly, while ensuring successful negotiations between the Member States. To this end, three compromise proposals were prepared and discussed in the Working Group on Social Issues by November 2021. In November 2021, three discussions within the Working Group were held where a general approach was adopted. After the adoption of the Directive, the Articles ensuring greater pay transparency will be transposed into national law, in line with the agreed deadline for the implementation of the Directive.

Recommendation: *expand the scope of pay comparisons beyond the same enterprise.*

The Republic of Slovenia 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, as it considers the proposed Directive to be of key importance for the achievement of 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 Pay

Transparency Directive includes provisions for pay transparency measures through which, when transposed into Slovenian legislation, some of the obstacles for the implementation of the Recommendation will be eliminated. Member States will have to develop specific tools and methodologies to support and guide the assessment of what constitutes equal value.

The proposal for the Pay Transparency Directive also addresses the reporting of the gender pay gap and the monitoring of the implementation of the principle of equal pay for equal work or work of equal value for women and men, as well as the collection of data on the gender pay gap, which will also have to be disaggregated with regard to the economic sector.

Recommendation: 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 Government, the competent ministries and other relevant stakeholders are taking various measures and activities to promote gender equality in practice, including equal pay for men and women. At its meeting held from 10 to 12 May 2021, the Governmental Committee presented the efforts of the Government of the Republic of Slovenia regarding the progress and implementation of gender equality in practice, including the provision of equal pay. To this end, several analyses and research studies, including the analysis undertaken by the Institute of Macroeconomic Analysis and Development, have been carried out to additionally highlight the problems and the reasons behind the pay gap, as well as the various measures and activities of the Government of the Republic of Slovenia, the competent ministries and other relevant stakeholders.

It was also highlighted that a new Resolution on the National Programme for Equal Opportunities until 2030 (hereinafter: the Resolution) 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: 1. 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; 2. 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 of the Republic of Slovenia and is expected to be adopted by the National Assembly of the Republic of Slovenia in the first half of 2022. 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 pay gap in the Republic of Slovenia has been increasing since 2010; it, however, remains low in comparison to other Member States. According to the latest EUROSTAT data, the pay gap has decreased from 9.3% in 2018 to 7.9% in 2019, ranking Slovenia 5th compared to other EU Member States (an average of 14.1%).

Despite the relatively low pay gap in comparison to other Member States, the Republic of Slovenia will continue its efforts to enforce various measures and activities ensuring that progress is made in achieving gender equality in practice and that the key factors deepening the pay gap are addressed.

In addition to the measures and activities implemented under the Resolution 2015–2020, various other activities to ensure equal pay have been supported in recent years. Some projects have raised sensitivity and awareness among professionals and the general public, such as the annual celebration of the European Equal Pay Day. A handbook on the implementation of the right to equal pay prepared by the Slovenian Association of Free Trade Unions in cooperation with the Women's Lobby of Slovenia, has also been published. The handbook contains examples of the gender pay gap in Slovenia, including possible solutions and instructions for employees on how to take action.

One of the reasons for the gender pay gap is the unbalanced distribution of care and housekeeping between partners. The Ministry of Labour, Family, Social Affairs and Equal Opportunities pays close attention to this issue and regularly participates in and finances projects that address this issue. Between 2016 and 2017, the Ministry of Labour, Family, Social Affairs and Equal Opportunities implemented, in cooperation with many local institutions and the Icelandic Centre for Gender Equality, the *Active.Everyone* project (<http://aktivni-vsi.enakostspolov.si>), which addressed this issue with an emphasis on fatherhood. The project comprehensively addressed the whole range of gender stereotypes that directly or indirectly hinder progress in this area. Within the project, several activities for children in kindergartens and schools, for parents, professionals in local self-government and social services, healthcare employees, political decision-makers, employers and trade unions were carried out. These activities were supported by guidelines on gender mainstreaming in their relevant areas of work. Promotional videos were made, including a documentary which presents social changes related to fatherhood and encourages men to pursue active fatherhood through positive role models.

Currently, also the project *Aktivni očka (Active Daddy)* (<https://ockavakciji.eu>), co-funded by the European Union, is being carried out. 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)* (<https://mojedelo-mojapokojnina.si>), 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 purpose 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.

Horizontal segregation is one of the factors behind the gender pay gap. Women predominate in the education, health and social assistance sectors, which are among the most exposed and burdened areas in the face of the COVID epidemic. Therefore, the agreement of 9 November 2021 between the representative trade unions in the health and social assistance sectors and the Government on the increase of wages in these sectors is an important measure that will also contribute to reducing the pay gap.