



**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 1196<sup>th</sup> 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 331<sup>st</sup> 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.<sup>1</sup>

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<sup>1</sup> 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).

**1<sup>st</sup> 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.