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The wage gap between women and men

Reply to Recommendation[1]: Recommendation 1907 (2010)
Committee of Ministers

1. The Committee welcomes Parliamentary Assembly Recommendation 1907 (2010) on "The wage gap between women and men", which raises serious issues in relation to the disadvantage of women in the labour market. It has brought the recommendation to the attention of the governments of member states and has also transmitted it to the Steering Committee for Equality between Women and Men (CDEG), the European Committee of Social Rights (ECSR) and the Governmental Committee of the European Social Charter, for information and possible comments.

2. In the Declaration "Making gender equality a reality", adopted at its 119th Session (Madrid, 12 May 2009), the Committee of Ministers condemned the persistent gender pay gap, as well as obstacles met by women to entry and advancement in the labour market. The Committee urged member states to commit themselves fully to bridging the gap between equality in fact and in law and to act to ensure economic independence and empowerment of women by guaranteeing that equality is respected in the labour market and economic life. It indicated that this will be possible by, among other things, eliminating discrimination generally and in particular that emanating from gender stereotypes, and by guaranteeing equal pay for equal work or work of equal value.

3. The Committee of Ministers observes that Article 4, paragraph 3, of the European Social Charter requires states to recognise the right of men and women workers to equal pay for work of equal value. From a wider perspective of safeguarding the right of all workers to workplace equality, the principle of equal pay without discrimination based on sex is also safeguarded by Article 20 of the Revised Charter (and also by Article 1 of the Additional Protocol of 1988). Article 20 is one of the pillars of the Charter, being one its nine "hard core" provisions. The Committee of Ministers notes that the principle of equal pay for work of equal value is also guaranteed in various other international instruments, such as ILO Conventions and the Charter of Fundamental Rights of the European Union (Article 23).

4. The ministers of the states participating in the 7th Council of Europe Conference of Ministers responsible for Equality between Women and Men (Baku, 24-25 May 2010) adopted the Resolution on "Bridging the gap between *de jure* and *de facto* equality to achieve real gender equality", in which they noted that "despite positive and significant achievements in legislation and policy making and, despite the progress achieved towards *de jure* gender equality, the realisation of *de facto* gender equality remains a challenge with regard to the unequal distribution of power and responsibilities, the gender pay gap and the unequal access to economic, social and cultural resources …". They also adopted the Action Plan "Taking up the challenge of the achievement of *de jure* and *de facto* gender equality", in which they recommend that the Council of Europe's activities be pursued, *inter alia*, with a view to the ending of discrimination between women and men in the labour market and especially closing the gender pay gap. On 29 September 2010, the Committee of Ministers agreed to take account of the aforementioned resolution and action plan in the future work of the Council of Europe in the area of gender equality. In that context, the feasibility of the studies recommended by the Parliamentary Assembly will be examined by the CDEG.

1. adopted at the 1095th meeting of the Ministers' Deputies (13 October 2010)

5. The Committee of Ministers refers to the two opinions received from the ECSR and the Governmental Committee of the European Social Charter. It notes the important work of these committees as regards member states' undertakings under the European Social Charter and their firm commitment to continue to ensure compliance with the right to equal pay for work of equal value. The Committee of Ministers notes in particular that the former committee oversees that States Parties to the Charter encourage the adoption and promotion of positive measures to reduce the wage gap between women and men. Such measures include, for example, the quality of wage statistics and their coverage, as well as the inclusion of the issue of equal pay as a priority in national action plans for employment.

6. In conclusion, the Committee of Ministers invites States Parties to the Charter which have not yet accepted Article 4, paragraph 3 and Article 20 and/or the collective complaints procedure to do so. An important target date could be the 50th anniversary of the Charter (before 18 October 2011). This would enable the competent organisations to submit complaints under the Charter to the ECSR concerning breaches of the right to equal pay.

Appendix 1 to the reply

Comments by the Steering Committee for Equality between Women and Men (CDEG)

1. The CDEG has denounced, for a long time, discrimination against women on the labour market. During the 6th ministerial conference (Stockholm, June 2006), ministers responsible for equality between women and men recalled that, in the labour market, discrimination was often reflected in higher unemployment rates for women, as well as a persistent salary gap (approximately 20%). They underlined that women were obliged more frequently to accept part-time employment and lower paid jobs and consequently enjoy lower levels of social protection.

2. These inequalities, the immediate consequences of which would appear to be profitable – low cost work force, employment flexibility, part-time work –, cause long term damage to the economy due to the fact that half the population is marginalised.

3. Therefore, the CDEG supports the proposals made by the Parliamentary Assembly on the abolition of the wage gap between women and men. As regards the proposals for studies recommended by the Assembly, the CDEG will examine this further in the context of the follow-up to the 7th Council of Europe Conference of Ministers responsible for Equality between Women and Men. It also informs the Assembly that it has been proposed by the Spanish authorities to organise a Council of Europe day for equal pay for women and men. It will examine this proposal at a forthcoming CDEG meeting. If this proposal was agreed upon by member states, it expresses the wish that the Parliamentary Assembly and the other relevant bodies of the Council of Europe are associated in the organisation of this day, in a specific manner in order to contribute, through a pluridisciplinary approach, to the abolition of this discrimination contrary to the principle of equal treatment.

Appendix 2 to the reply

Comments by the European Committee of Social Rights (ECSR)

1. The Committee of Ministers has asked the ECSR to forward any comments it might have on Parliamentary Assembly Recommendation 1907 (2010). In reply to this request, the ECSR wishes to make the following observations:

2. The Charter is unique in Europe, not only in terms of the rights guaranteed, but also because of the double dimension of its supervisory mechanisms: an annual procedure based on national reports on the one hand and a collective complaints procedure allowing civil society organisations to lodge complaints on the other. The ECSR, the regulatory body of the Charter made up of 15 independent and impartial experts, rules on the conformity of national law and practice under both these procedures.

3. With a view to ensuring the effective exercise of the right to equal pay referred to in Parliamentary Assembly Recommendation 1907 (2010), Article 4§3 of the European Social Charter requires states to recognise the right of men and women workers to equal pay for work of equal value. From a wider perspective of safeguarding the right of all workers to workplace equality, the principle of equal pay without discrimination based on sex is also safeguarded by Article 20 of the Revised Charter/Article 1 of the Additional Protocol of 1988. Article 20 is one of the pillars of the Charter, being one of the nine fundamental “hard core” provisions of the Charter.

4. In the context of its monitoring mechanism, the ECSR has established a case law based on the principle of “equal pay for work of equal value”. Equal pay is thus assessed in terms of the elaboration by states of appropriate methods for evaluating jobs and positions that permit the comparison of wages not only within a given enterprise but also with other companies and branches. The promotion of equal treatment of the sexes and equal opportunities for women and men through collective agreements, including on equal pay matters, is a prerequisite for the effectiveness of the rights set out in Articles 4§3 and 20 of the Charter.

5. In examining the conformity of national situations with Articles 4§3 and 20 of the Charter, the ECSR notes that the reasons for the pay gap can be explained by the fact that women work in less valued sectors which are therefore less remunerated. It believes that wage discrimination will continue to exist as long as there are no effective equal opportunities in the labour market.

6. Article 4§3 of the Charter requires that the right to equal pay be expressly set out in domestic law and that all clauses in employment contracts or collective agreements which violate the principle of equal pay be held to be null and void. Furthermore, courts must have the power to waive the application of the offending clauses (Conclusions XIV-2, Addendum, Slovak Republic).

7. More precisely, the Charter, through its Article 4§3, requires states to ensure that domestic law provides for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court (Conclusions I, Statement of Interpretation on Article 4§3). Moreover, domestic legislation should provide for a shift of the burden of proof in favour of the complainant in discrimination cases and the victim must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered and act as a deterrent to the offender. Victimisation against a person who has sought to enforce his/her rights is prohibited (Conclusions 2008, Article 20, Malta).

8. It should be noted that the ECSR oversees that states encourage the adoption and promotion of other positive measures to reduce the wage gap between women and men. Such measures concern, for example, the implementation of measures to improve the quality of wage statistics and their coverage as well as the inclusion of the issue of equal pay as a priority in national action plans for employment.

9. Finally, the ECSR welcomes the initiative taken by the Parliamentary Assembly with a view to the adoption of Recommendation 1907 (2010) and reaffirms its commitment to ensuring compliance with the right to equal pay for work of equal value for women and men. It encourages the systematic sharing of information with other Council of Europe bodies and with member states with a view to making the work in the field of equal pay more effective.

10. In conclusion, the ECSR invites States Parties of the Charter which have not yet accepted Articles 4§3 and 20 and/or the collective complaints procedure to do so before 18 October 2011 (date of the 50th anniversary of the Charter), as this would enable the competent organisations to submit complaints with the ECSR concerning breaches of the right to equal pay.

Appendix 3 to the reply

Comments of the Governmental Committee of the European Social Charter

1. Further to the request of the Committee of Ministers (1080th meeting, 24 and 26 March 2010) for an opinion on Parliamentary Assembly Recommendation 1907 (2010), the Governmental Committee wishes to make the following observations:

2. The European Social Charter exists since 1961 and it was revised in 1996. It is one of the cornerstones of the European human rights model in the field of fundamental economic and social rights. By 3 March 2010, all member states of the Council of Europe had signed it and 43 of them had ratified. In the Amsterdam Treaty, entered into force on 1 May 1999, the European Union confirms its attachment to fundamental social rights as defined in the European Social Charter.

3. The Charter is equipped with an effective and efficient system of monitoring which guarantees the respect of fundamental economic and social rights by the States Parties.

4. As stipulated under Article 27 of the Charter, the Governmental Committee prepares the decisions of the Committee of Ministers related to the application of the Charter by the States Parties. It examines the national situations on the basis of social, economic and other policy considerations as regards the implementation of the rights guaranteed by the Charter and, in particular, selects the situations which should be the subject of individual recommendations addressed to the States Parties concerned.

5. The Governmental Committee of the European Social Charter welcomes the Parliamentary Assembly Recommendation 1907 (2010) which touches, *inter alia*, upon some of the most important rights guaranteed by the Charter, as:

– the right to a fair remuneration (Article 4, especially paragraph 3);

– the right to equal opportunities and equal treatment in matters of employment and occupations without discrimination on the grounds of sex (Article 20 of the Revised Charter/Article 1 of the Additional Protocol of 1988);

– the right to just conditions of work (Article 2); and

– the right of employed women to protection of maternity (Article 8).

6. The Governmental Committee takes note of the Parliamentary Assembly Recommendation 1907 (2010) and reiterates its commitment to assure the enjoyment of rights set forth in the Charter and more specifically Article 4, paragraph 3 and Article 20 of the Revised Charter/Article 1 of the Additional Protocol of 1988 shall be secured without discrimination on any ground such as sex.

7. Bearing in mind the increasing presence of women on the labour market and the continuing wage gap between women and men, the Governmental Committee recalls that this situation infringes the Charter, namely the principle of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

8. The Governmental Committee will continue to ensure the necessary follow-up in order to guarantee that States Parties take appropriate measures, in law and in practice, to ensure or promote equal opportunities and equal treatment in matters of employment and working conditions including the right to a fair remuneration.

9. The Governmental Committee recognises the right of women and men workers to equal pay for work of equal value as one of the fundamental principles of the Charter and emphasises its commitment to assessing the objective criteria used by the States Parties to determine whether this principle is being respected.

10. Finally the Governmental Committee considers that all relevant information available in member states of the Council of Europe should be shared and improved in order to promote equality in pay between women and men, in law and in practice.