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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

28 May 2018

**Case Document No. 9**

**University Women of Europe (UWE) v. Bulgaria**  
Complaint No. 125/2016

## **FURTHER RESPONSE FROM THE GOVERNMENT ON THE MERITS**

**Registered at the Secretariat on 20 April 2018**



**TO  
MR GIUSEPPE PALMISANO  
PRESIDENT OF THE  
EUROPEAN COMMITTEE OF  
SOCIAL RIGHTS**

**DEAR MR PRESIDENT,**

In relation to Collective Complaint No.125 of 24 August 2016 lodged against Bulgaria by the international non-governmental organization University Women of Europe (UWE) to the European Committee of Social Rights of the Council of Europe (CE) and the complainant's response to the report of the Bulgarian government on its justifiability, in accordance with your invitation to our government to present a new response by 20 April 2018, we hereby express the following opinion:

**I. As regards the arguments concerning the inadequate and difficult-to-apply procedures for protection against discrimination**

More detailed information from the Commission for Protection against Discrimination (CPD) has been requested.

As regards the general allegations contained in the response of the University Women of Europe about incorrect functioning of the protection against discrimination in Bulgaria, it would be appropriate to mention that the network of 22 regional representatives of the Commission for Protection against Discrimination who work on the territory of the entire country, including in more remote and isolated areas of the country, provide free legal aid and consultation to citizens when they lodge complaints under the Protection against Discrimination Act. A special directorate is also set up in the Commission for Protection against Discrimination – “Administrative-Legal Service”, the legal advisers in which provide free legal aid and consultation to citizens who see themselves as victims of discrimination.

In relation to the allegations that Bulgaria does not provide any data for the number of complaints lodged and the types of grievances, the Commission for Protection against Discrimination initiated for the past six years, for the period 2012 – 2017, 168 files based on the protected characteristic “gender”, as 64% of these files concern multiple discrimination based on gender. After the complex characteristic “personal situation”, the characteristics that most frequently are present in combination with the characteristic “gender”, in the cases of multiple discrimination, are “disability”, “education” and “marital status.” The Commission for Protection against Discrimination initiated for the same period 13 sexual harassment procedures. The sexual harassment cases are delicate, frequently there are no witnesses and for this reason the complaints lodged to the Commission for Protection against Discrimination, which contain such grievances, are not many over the years. It is important to point out that the Commission for Protection against Discrimination considers different forms of discrimination, as well as cases of discrimination grievances based on more than one protected characteristic (multiple discrimination).

There is no specific statistics about the cases of discrimination grievances under Article 14 of the Protection against Discrimination Act, in which the complainant is a “woman”, but the analysis of the practice of the Commission makes it clear that the prevailing part of the files heard by the Second Standing Panel of the Commission for Protection against Discrimination based on the “gender” characteristic are about grievances raised by women. Women are frequently discriminated due to unequal pay, due to their being neglected as

employees, as they are sometimes subject to mistrust and mockery by the predominant male staff of IT companies. The Commission for Protection against Discrimination frequently receives grievances concerning dismissal during pregnancy, preliminary ultimatums from employers against young women starting works that getting pregnant is not wanted, the conditions of work change for those who have stated that they are pregnant, e.g. there is no lunch break, there is harassment, discomfort, disrespect as adequate employees, there are even accusations that the pregnancy is betrayal of the management. By his acts and sometimes by the acts of his subordinates, the employer creates a hostile environment and discriminates a woman who wants to be a mother, prevents her from being treated, which is sometimes required, and sometimes the final result is a dismissal with a motive, e.g. that the complainant does not have the qualities required for effective performance of the duties of office. One should not ignore either the stress, to which the future mothers are subjected. Frequently, in the cases in the Commission for Protection against Discrimination it also does have an impact on the pregnancy as several times it created a risk of loss of the baby.

In relation to the guaranteeing of equal pay for equal to equivalent labour, Bulgarian courts frequently interpret the failure to fulfil the obligation referred to in Article 14, paragraph 1 of the Protection against Discrimination Act as an independent violation under the Protection against Discrimination Act. Regardless of the freedom of negotiation of the labour remuneration the employer cannot ignore the principle of equal pay referred to in Article 243 of the Labour Code, which is also reproduced in the provision of Article 14 of the anti-discrimination law.

According to the Bulgarian case-law of courts, to which the Commission for Protection against Discrimination adheres, work of equal value has a different nature but the same value of the workforce, i.e. work that regardless of its different nature costs equally as the work of another nature, no matter who performs it. The equality is determined the equivalent educational qualification, the duration of the workforce spent, the productivity and conditions of the work being performed.

As examples of good case-law in view of the encouragement of the equality of men and women, including in relation to provision of equal pay for equal work or work of equal value, we can set out the following decisions rendered in the years:

Decision No.254 of 17 July 2017

Second standing panel of the Commission for Protection against Discrimination establishes that an employer committed direct discrimination based on the characteristic “gender” against a pregnant female employee who had previously notified of an in vitro procedure being carried out and a property sanction was imposed on the employer-company in the amount of BGN 1250. After the female employee gave a notice of her attempts to get pregnant the company started requiring constantly information for her pregnancy and suspended her additional health insurance. In her complaint the employee alleged that she had received letters from her employer stating that he would suspend her from work and would suspend her building access card. Furthermore, the employee received an order setting forth an obligation for her to submit on a monthly basis a document for the presence of pregnancy.

Decision No.82 of 2016 of the Commission for Protection against Discrimination under file No.185/2015 and Judgment No. 4950 of 2016 of the Sofia City Administrative Court under administrative case No.3949/2016.

The complainant worked as a kinesiologist in a municipal day-care centre for social integration and in the relevant period she received basic monthly remuneration in the amount of BGN 360. The other employees holding the same position were two men who received basic monthly remunerations amounting in a range from BGN 550 to BGN 640. The job descriptions were the same.

The decision take into account that the higher degree of higher education of the other two employees cannot be a criterion substantiating a difference in the work being performed, as long as it is not a precondition required to hold the job position. The Commission imposed a sanction in the decision and issued a prescription to set the remunerations at an equal level.

Decision No.1 of 06 January 2015

Second standing panel of the Commission for Protection against Discrimination established that the representative of the employer – Regional Food Safety Directorate – town of H., V.H. – director in the relevant period, and H. Delchev V., having his address at: town of UUU, committed direct discrimination with respect to the complainant M. S. N., having her address at: town of UUU by failing to provide her with the same conditions of work and equal pay for equal work or work of equal value compare to her colleagues, obligations ensuing from Article 13, paragraph 1 and Article 14, paragraph 1 and paragraph 2 of the Protection against Discrimination Act for every employer, and as a result they put her at a disadvantage compared to other chief inspectors.

IT HEREBY IMPOSES on the grounds of Article 80, paragraph 1 of the Protection against Discrimination Act on the representative of the employer – Regional Food Safety Directorate – town of H., V.L. – director in the relevant period, an administrative penalty “fine” in the amount of BGN 250 (two hundred and fifty) for violating Article 13, paragraph 1 Article 14, paragraph 1 and paragraph 2 of the Protection against Discrimination Act in conjunction with Article 4, paragraph 1 and paragraph 2 of the Protection against Discrimination Act.

IT HEREBY IMPOSES on the grounds of Article 80, paragraph 1 of the Protection against Discrimination Act on H.V., having his address at: two of UUU Dimitrovgrad, an administrative penalty “fine” in the amount of 250 (two hundred and fifty) for violating Article 13, paragraph 1 Article 14, paragraph 1 and paragraph 2 of the Protection against Discrimination Act in conjunction with Article 4, paragraph 1 and paragraph 2 of the Protection against Discrimination Act.

The Commission for Protection against Discrimination issues a mandatory prescription to the director to ensure in the future equal conditions of work and to equalize the individual basic labour remuneration of the company’s employees holding the same job position under equal conditions of work.

Decision No.221 of 2011 of the Commission for Protection against Discrimination under file No./2014, upheld by Judgment No.2966 of 2012 of the Sofia City Administrative Court under administrative case No.896/2012, upheld by Judgment No.9 of 2013 of the Supreme Administrative Court under administrative case No.9135/2012.

The two complainants started work in the Child Protection department at the Social Support Directorate, and soon after they were allocated more files than their colleagues. The two newly appointed female employees were given lower remuneration. The annual evaluations given to them were equal to the ones of the other employees in the department. The salaries of everyone in the department were subsequently increased but after the increase the amount of the female complainants’ remunerations remained lower than their colleagues’ remunerations. The Bulgarian equality authority ruled that the failure to fulfil the obligation under Article 14, paragraph 1 of the Protection against Discrimination Act was an independent violation of this law and it did not need to be based on any of the characteristics referred to in Article 4, paragraph 1 of the Protection against Discrimination Act. In the presence of the factual prerequisites of Article 4, paragraph 2 or paragraph 3 of the Protection against Discrimination Act the negotiation and payment of basic labour remuneration in a different amount for equal work or work of equal value could also be discrimination. The

lower individual basic labour remuneration in this case is due to the lower length of service and professional experience of the female complainants, resp. it is based on their personal situation. In its decision, the Commission for Protection against Discrimination finds out both a violation of Article 14 and discrimination under Article 4, as it imposes a sanction and issued a binding prescription for equalization of the remunerations.

In its case-law the Commission for Protection against Discrimination, Second specialized standing panel hears complaints where the grievance about unequal pay is not always discrimination.

Decision No.138/ 13 April 2016 under file No.31 /2015 of Second Specialized Standing Panel of the Commission for Protection against Discrimination.

Second specialized standing panel stated that the remunerations of those working under a labour contract in the company are an element of the individual labour contract of each of them and their formation is based on the “Internal Salary Regulations”, the “Collective Agreement”, as well as is in accordance with the requirements of the Labour Code. The individual amount of the labour remuneration is determined and negotiated upon the conclusion of the individual labour contract subject to certain categories and indicators regulated in details and exhaustively in Section II of the Collective Agreement and Appendices No.16, 2 and 3 thereto. The specific differences in the amount of the remunerations for every employee are determined by the different impact of the separate indicators, criteria, coefficients, job degrees, educations qualification and length of service, which is differentiated into general one and one acquired in the Company. For each year of service, wherever the period of service is acquired – the “Bonus for a period of service” is 1 % on the individual basic salary (IBS), while for every year of “Service in the company” 1.1 % is accrued on the individual basic salary, but more than 16,5 %. The two coefficients are separate and independent from each other and apply independently, rather than separately, as set out by the complainant. When comparing the specific submitted data to the complainant’s allegations the panel found out that the latter erroneously decided that upon the formation of her monthly remuneration only the percentage for “Service in the company” was accrued, because as evident from the presented written evidence, in addition to the two years of service in the company, a coefficient was accrued to the complainant – 2.2 % (1.1 % per year), for her entire period of service in the total amount of twenty-two years (inside and outside “M” EAD), in accordance with the mechanism set out in the “Collective Agreement” 22 % (1% per year) were accrued on the basic salary – BGN 380.81 (for 11 days of work) equal to BGN 83.78. The remunerations of certain employees referred by the complainant as reference persons were accrued in the same way.

The panel found that the BGN 300 difference specifically envisaged in the complaint in respect of the remunerations of the complainant and the other three employees was due to the fact that for the particular month (January 2015) the complainant’s basis salary (on which 22 % were accrued for “Bonus for a period of service”) was for only 11 days of work in the month, because in the rest of the month (10 days) she was in a full-pay leave, for which no “Bonus for a period of service” is accrued.

The implementation of the principle “Equal pay for equal work”, which is laid down in Article 14 of the Protection against Discrimination Act, presupposes the equal application of the same (for all) criteria in the formation of the labour remuneration to each of the employees in the company, regardless of the characteristics referred to in Article 4, paragraph 1 of the Protection against Discrimination Act. The salary-related documents specifically submitted under the file clearly show that as regards each of the employees of the respondent company –

“M.” EAD who are mentioned in the file (the complainant and the reference persons specified by her), all criteria forming their labour remunerations were reflected and applied equally.

Second specialized standing panel of the Commission for Protection against Discrimination rendered a decision, which establishes that the company-employer did not in accordance with the provision of Article 14 of the Protection against Discrimination Act allow more disadvantageous treatment, as a form of discrimination within the meaning of Article 4, paragraph 2 of the Protection against Discrimination Act, against the complainant and it therefore rejected the lodged complaint.

**II. As regards the allegation that “the information provided by the respondent state ..... still merely takes the form of a description of the legal and institutional framework, there being a general lack of clarifications which could serve to determine the conformity of the policies followed with the requirements of the Charter.”**

A sustainable mechanism for protection in all sectorial policies is created by the Equality between Women and Men Act. The specified law regulates the implementation of the state policy in the field of gender equality, which is based on the principles of equal opportunities for women and men in all spheres of public, economic and political life, equal access of women and men to all resources in the society, equal treatment of women and men and non-admission of discrimination and violence based on gender, balanced representation of women and men in all decision-making bodies, overcoming of gender stereotypes.

By official resolution No.9 of 7 March 2018 the Council of Ministers adopted the **National Action Plan for Encouraging the Equality between Women and Men for 2018**, as its aim is the implementation of a uniform policy of equality between women and men, improved awareness of the meaning of gender equality and overcoming of any related stereotypes. The activities are structured in five priority areas:

1. Increasing the participation of women in the labour market and equal degree of economic independence;
2. Decrease of the gap in pay and incomes between the genders;
3. Encouragement of gender equality in the decision-making processes;
4. Fight against any violence based on gender and protection of and support to the victims;
5. Change in the gender stereotypes existing in society in various spheres of public life.

The National Action Plan for Encouraging the Equality between Women and Men for 2018 pays special attention to the measures for providing better balance between professional and personal life of parents with small children and provision of employment to unemployed persons by providing opportunities to take care of children. Particularly highlighted are the measures for making equal the retirement age of men and women and encouraging employers to employ unemployed persons – single (adoptive) parents and/or (adoptive) mothers with children aged up to 5.

The exercising of the right to work, provision of equal access to employment, equal opportunities and non-admission of discrimination are among the priorities of the Republic of Bulgaria in the social sphere. A sustainable model of cooperation between the institutions, social partners and civil society is created. **Gender equality is among the priorities of our country during the Bulgarian EU Council Presidency in 2018.** As an important priority topic in the area of gender equality during the Bulgarian EU Presidency, our country has

identified the topic about “Women in a Digital World”, reflected also in the Tallinn declaration. The choice of this topic is directly related also to the achievement and progress of Bulgaria in this respect. Data of Eurostat shows that our country ranks first in EU in terms of share of women and girls employed in the Information and Communication Technologies sector with 27,7% compared to an EU average rate of 16,1%. The topic is current and relevant also in relation to the overcoming of gender stereotypes. The increasing participation of women in this predominantly men’s sector is indicative of the progress of the society towards the achievement of gender equality. The information and communication technologies develop at an unprecedented speed and influence the socioeconomic system and the labour market. They create a possibility for new jobs but also a need for new skills and specific qualification of the workforce.

Likewise, Bulgaria strictly complies with its commitments also under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as in the end of 2017 the Council of Ministers adopted the Report on the Implementation of the Action Plan for the Implementation of the Final Recommendations of the UN Committee on the Elimination of Discrimination against Women.

As regards the arguments in items 2.1 and 2.2. in the complainant’s response that the “The respondent state cannot rely on conclusions of conformity concerning Article 4§3” of the European Social Charter and that “The respondent state against which UWE has lodged a complaint based on Articles 1, 4 §3, 20 and E of the Social Charter reiterates in its submissions, probably on a concerted basis with other respondent states, the idea already put forward in the observations on admissibility, and which did not achieve the desired aim at that stage, whereby the Charter does not impose an obligation of results but merely of means – or, to put this another way but with the same effect, only imposes an obligation of results in terms of passing legislation that meets the requirements of the Charter and possibly setting up institutions to ensure its enforcement, but not in terms of achieving the objectives set.” – **in our observations on the merits of the appeal we have not expressed such positions as the complainant alleges and tries to refute.**

### **III. As regards the complainant’s arguments on the allegation of unequal pay for equal labour**

The labour remuneration in the country guarantees gender equality. Pursuant to Article 243, paragraph 1 of the Labour Code, women and men are entitled to equal pay for equal work or work of equal value. This requirement applies to all remunerations paid directly or indirectly, cash or in kind, rather than only covering the basic salary of the worker or employee.

It is required that the criteria for evaluation of work are equal for all workers and employees and are determined by the collective agreements or by the internal salary regulations or by the legally established conditions and procedure for evaluating the employees in state administration. Any enterprise in the country has internal salary regulations, as the manner of its formation is determined in them. The basic salary is determined on the basis of an evaluation and grading of the jobs and positions and is agreed upon in the labour contract between the parties to the employment relationship in the certain ranges (Article 4, paragraph 3 of the Ordinance on the Structure and Organization of Salaries). **Based on the above, we consider that the legislation has created mechanisms for the formation of the labour remuneration that guarantees gender equality.**

It should be noted that pursuant to Article 24 of the Protection Against Discrimination Act the employer is bound upon hiring, when this is necessary for the achievement of the



objectives of this Act, to encourage the application of persons belonging to the less represented gender or ethnic groups for the performance of certain work or for the holding of a certain job. Likewise, the employer is bound, all other things being equal, to encourage the professional development and the participation of workers and employees belonging to a certain gender or ethnic group, when they are less represented among the workers or employees performing certain work or holding a certain job.

**The complaint does not adduce allegations that the national legislation contradicts to the requirements of the European Social Charter, as we consider that the arguments stated in the complaint are unjustified on their merits.**

As regards the reasons for the existing gaps in the pay between men and women, they are due to:

- *traditions and stereotypes* that influence the choice of education, especially for girls directed towards typically feminine professions, and they are – as an unwritten rule – lower paid (teachers, seller-consultants in the textile industry, dressmakers, etc. feminine professions);
- *career development* – women face higher obstacles when joining the labour market, using a longer maternity leave, difficult balancing between work and family duties delays the career development due to the impossibility of combining the professional fulfilment and the family duties;
- *the appearance of new production technologies* and the requirements for constant improvement of the professional qualification, the combining of the professional fulfilment and the family duties requires from women to make an alternative choice – work or family;
- according to data from the annual statistics of employment and labour costs – employed persons, average salary, movement of the employed persons, employer's costs of labour of the National Statistical Institute: in 2016 the average salary for the country grows up compared to 2015 by 8,0%; for men the average salary increases by 7,3%, and for women the average salary increases by 8,7%, respectively. By economic sectors the average salaries of women show a higher rate of growth except for the "Production and distribution of electricity and heating and of gaseous fuels", "Creation and distribution of information and creative products", "Telecommunications", "Real estate operations" and "Administrative and auxiliary activities";
- data from the salary structure monitoring in 2014 of the National Statistical Institute shows the following: men are 48% of the total number of employed persons, the other 52% are women. The gender inequality in pay is more pronounced among full-time employees – the gross hourly salary of women is BGN 4.16 and it makes 87% of the remuneration of men who earn BGN 4.77 per hour. In the group of part-time employees there is no such gap – the average hourly rates of women and men are almost equal – BGN 3.27 and BGN 3.38, respectively.

**The proper analysis of the gender pay gap requires to take into account the individual characteristics of the employed persons and the characteristics of the enterprises they work in.**

**The inequality in the average salaries does not necessarily mean a difference in the pay between women and men practicing the same profession and having the same professional experience. As noted, in order to properly analyse the specificities of the gender pay inequality, it is necessary to carefully consider the key determinants of the remuneration – profession, level of education, professional experience, working hours, economic activity, size of the enterprise.**

Data of the National Statistical Institute shows that the average monthly gross salary of full-time female employees accounts for 87% of the gross monthly salary of men.

Another example can also be the pay inequality in the sector “Human healthcare and social work” where full-time working women earn 28% less than men per month and 32% less per year. A specific characteristic of this sector is that 79,4% of the employees are women who are employed at a lower paid job – nurses and social workers. An explanation may be sought in the following facts:

- nurses are a part of those employed in the sector. It is publicly known that their profession is feminized and their remunerations are at some places close to the minimum wage for the country;
- social workers are a part of those employed in the sector and also predominantly women. In the “Medical-and-social cares with accommodation and social work without accommodation” economic activity the average salary in the third quarter of 2017 is about 62% of the average for the country.

Another example is the “Construction” sector, where the average monthly salary for women exceeds by 8% the one for men and is by 6% higher in terms of annual salaries but in this industry women are employed – 14,2%.

While on a national level the gap in the pay between genders is for the benefit of men, the review of the results by economic activities shows that in certain sectors women are better paid – e.g. in the “Administrative and auxiliary activities” sector they receive for their work 35% more than men per month and the same percentage more per year.

#### **IV. As regards the allegations of inadequate rates of female involvement in management**

In 2017, data of the National Statistical Institute<sup>1</sup> shows that the number of employed persons is 3 150,3 thousand, respectively employed men are 1 682,6 thousand or 53,4%, and employed women are 1 467,7 thousand or 46,6%. There is an employment growth in both genders compared the preceding (2016) year. Employment among men has gone up by 4,7%, while for women the reported increase amounts to 4,2%. In 2017 the persons employed on management positions are 181,4 thousand, respectively 110,3 thousand men and 71,1 thousand women. In 2017 there is a 2,7 % increase in the number of women holding management positions from 69,3 thousand to 71,1 thousand. The trend in the group of men is negative as their number for the period under review goes down by 2,8% from 113,5 thousand to 110,3 thousand. The relative share of men holding management positions for the period under review is 6,6% given a 4,8% relative share of women. The difference between the relative shares of women and men holding management positions decreases from 2,9 percentage points in 2013 to 1,7 percentage points in 2017. A positive trend is monitored also with respect to the dynamics of the structure of employed persons holding management positions by gender. For the period 2013 – 2017 the relative share of women goes up by 2,7 percentage points from 36,5 % to 39,2%, while men’s share decreases respectively from 63,5% to 60,8%.

#### **Employed persons, incl. managers, by gender for the period 2013-2017**

##### **Employed persons**

	<i>Unit</i>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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<sup>1</sup> Workforce monitoring (National Statistical Institute)

<b>Men</b>	thousand	1546,9	1577,1	1607,5	1607,6	1682,6
<b>Women</b>	thousand	1388,1	1404,3	1424,3	1409,2	1467,7
<b>Total</b>	thousand	2934,9	2981,4	3031,9	3016,8	3150,3
<i>Structure</i>						
<b>Men</b>	%	52,7	52,9	53,0	53,3	53,4
<b>Women</b>	%	47,3	47,1	47,0	46,7	46,6
<b>Difference</b>	p.p.	5,4	5,8	6,0	6,6	6,8

### Managers

	<i>Unit</i>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Men</b>	thousand	123,3	118,4	115,4	113,5	110,3
<b>Women</b>	thousand	70,8	68,6	66,3	69,2	71,1
<b>Total</b>	thousand	194,1	187	181,7	182,6	181,4
<i>Structure</i>						
<b>Men</b>	%	63,5	63,3	63,5	62,2	60,8
<b>Women</b>	%	36,5	36,7	36,5	37,9	39,2
<b>Difference</b>	p.p.	27,0	26,6	27,0	24,3	21,6

### Relative share of the managers of the total number of employed persons – by gender

	<i>Unit</i>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Men</b>	%	8,0	7,5	7,2	7,1	6,6
<b>Women</b>	%	5,1	4,9	4,7	4,9	4,8
<b>Difference</b>	p.p.	2,9	2,6	2,5	2,1	1,7

Source: National Statistical Institute

### V. As regards the incurred expenses

We maintain our initial observations and we object to the complainant's request for recovery of the expenses incurred for the fee of the lawyer Anne Nègre. The European Committee of Social Rights does not have such power. It is not a judicial authority. The European Social Charter and the Additional Protocol do not provide for such an obligation of the governments.

The analogy of law to judicial proceedings before national courts, to which the complainant referred in its response, is not applicable to this case.

Still, if you consider that expenses in these proceedings may be sought and awarded we would like to ask you to award to us recovery of the Government's expenses for the preparation of the observations on the admissibility of the complaint and on the merits – in order to ensure equality of the parties in the procedure.

### In conclusion:

**Based on the above grounds, the government of the Republic of Bulgaria maintains its observations that it finds complaint No.125 of 24 August 2016 completely unjustified and asks the European Committee of Social Rights to reject it in full.**