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NEWS REPORT

Country: Bulgaria
Title: Anti-discrimination law amendments
Date: 28 April 2015
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Update of flash report nr: 1707-BG-39-Amendments adl

Context

Issue at stake: Shift of the burden of proof and definition of 'sex'
Ground of discrimination: All grounds (and sex)

Source: Legislation: Published in the State Gazette, issue 26/2015
Field: All fields
Applicable law: Protection Against Discrimination Act, Article 9 and subsection 17 in § 1 of the Additional Provision

Content

Case/law/policy development: On 25 March 2015, Parliament adopted at second hearing (final) a bill to amend two provisions of the Protection Against Discrimination Act: Article 9 on the shift of the burden of proof, and a new provision which partially defines 'sex' as a protected ground to include transgender status. Article 9 as amended: "In proceedings for protection against discrimination, after the party claiming to have been discriminated against, *produces (presents)* facts from which an *inference* that discrimination is at hand can be made, the respondent party has to prove that the principle of equal treatment was not breached" (emphasis added). New subsection 17 in § 1 of the Additional Provision: "Within the meaning of art. 4, section 1 [listing the protected grounds] the ground of 'sex' includes also gender reassignment cases."

Leading to the amendments, a bill was introduced in Parliament by the Government on January 16, 2014 (see flash report 1190-BG-39). In terms of Article 9, it read: "In proceedings for protection against discrimination, after the party claiming to have been discriminated against, *establishes* facts from which an inference that discrimination is at hand can be made, the respondent party has to prove that the principle of equal treatment was not breached." Subsequently, while in Parliament, between the first and second hearings, the bill underwent an unannounced change that replaced "establishes" with "produces (presents)".¹ That change was not discussed when the bill was voted. Prior to the amendment, the law read: "In proceedings for protection against discrimination, after the party claiming to have been discriminated against, *proves* facts from which a *conclusion* that discrimination is at hand can be made, the respondent party has to prove that the principle of equal treatment was not breached."

¹ Second version of the bill: <http://parliament.bg/bills/43/402-01-12.pdf>. Unfortunately, the first version is no longer available on Parliament's website.

Key points of analysis: The amended provision on the shift of the burden of proof is meant to bring national law closer to the directives' intention of making an inference of discrimination sufficient for the respondent to be required to carry out a rebuttal in order for a discrimination claim to fail. Substituting "conclusion" with "inference" makes it clearer that claimants' onus of proof is not stringent. Furthermore, while "establishes" in the initial version of the bill was synonymous with "proves" in the law before the amendments, "produces (presents)" in the amended version is a clear improvement, effectively alleviating complainants' onus of proof. The new definition of 'sex' makes that concept more inclusive than the ordinary meaning of the word, explicitly covering transgender. The amendments bring national law in stricter compliance with the Recast Directive 2006/54/EC, and with Directives 2000/43/EC and 2000/78/EC.

Internet link source:

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=93361>