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# Country report

## Non-discrimination

Bulgaria

2018

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**EUROPEAN COMMISSION**

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# **Country report**

# **Non-discrimination**

# **Bulgaria**

Margarita Ilieva

Reporting period 1 January 2017 – 31 December 2017

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## **LIST OF ABBREVIATIONS**

PADA: Protection Against Discrimination Act (principal, single equality law)

PADC: Protection Against Discrimination Commission (specialized equality body)

IPDA: Integration of Persons with Disabilities Act (additional, ground-specific equality law)

SAC: Supreme Administrative Court (final review instance for PADC decisions)

## EXECUTIVE SUMMARY

### 1. Introduction

Vulnerable groups include the Roma, refugees/ migrants, Muslims, Jews, non-traditional faiths, Macedonians, Turks, people with disabilities, especially mental disabilities, LGBT. The current Government rules in coalition with two parties that the European Commission Against Racism and Intolerance termed “ultranationalist/ fascist”: the “National Front for the Salvation of Bulgaria” and “VMRO-BND”.<sup>1 2</sup> Discrimination and hatred, including hate speech and hate crime, against the Roma, is pervasive, radical and unsanctioned. High-ranking public officials engage in overt incitement to hatred and discrimination against the Roma, portraying them as subhuman. In such cases, the Prosecutor’s Office and the equality body, competent under the law for hate speech, take no action.

Roma live in segregated housing in dire conditions, often suffering collective arbitrary forced evictions. The European Court of Human Rights (ECtHR) found Bulgaria liable in one such case.<sup>3</sup> Roma are plagued by long-term unemployment, with no access to training and jobs. They face discrimination, including harassment, in access to healthcare and services. Children study in segregated, substandard schools, or have no schooling at all. The criminal justice system targets them for disproportionate prosecution, and denies them equal protection by the law, including from hate crime by officials and civilians. They lack representation, and have no access to decision-making at any level.

Refugees/ migrants suffer from a sharp increase in hate speech and hate crime, including hate speech by officials. The violence goes unpunished. The ECtHR has found Bulgaria liable in one such case.<sup>4</sup> In 2016, vigilante groups became active, targeting foreigners in the border area, subjecting them to hate-motivated unlawful detention, verbal abuse, coercion, physical violence and other crimes under national law. The perpetrators were given positive national visibility by mainstream media, and a forum from whence to incite to hate and organised hate crime against refugees/ migrants. Former Prime-Minister Borisov publicly stated that he thanked the perpetrators for the help they were offering the state, and declared that any help was welcome.<sup>5</sup> Only one vigilante activist was taken to criminal court by the Prosecutor’s Office, unsuccessfully. Many asylum seekers live in inhuman conditions. Jews, Muslims, non-traditional faiths and Turks suffer from hate manifestations, such as temple desecration and violent demonstrations. The ECtHR found Bulgaria liable in one such case.<sup>6</sup> Macedonians are denied recognition of their identity (they are considered Bulgarians), and the courts refuse to register their organisations. Local authorities interfere with their peaceful assemblies. The ECtHR has found Bulgaria liable in several such cases.<sup>7</sup> Bulgaria is under enhanced supervision by the Committee of Ministers of the Council of Europe for failing to implement those judgments.

Human rights defenders have been targeted for verbal and physical violence for their activities in support of refugees/ migrants and other particularly marginalised minorities, including the Roma and the LGBT community.<sup>8</sup> A human rights lawyer, the legal director

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<sup>1</sup> Internal Macedonian Revolutionary Organisation - Bulgarian National Movement.

<sup>2</sup> ECRI, Report on Bulgaria, published 16 September 2014.

<sup>3</sup> *Yordanova and Others v. Bulgaria*, judgment of 24 April 2012. Application no. 25446/06.

<sup>4</sup> *Abdu v. Bulgaria*, judgment of 11 March 2014. Application no. 26827/08.

<sup>5</sup> See news reports at: <http://btvnovinite.bg/article/vodeshti-novini/bhk-sas-signal-sreshtu-premiera-bojko-borisov-zaradi-blagodarnostite-kam-dobrovolcheskite-otrjadi.html>; [http://www.dnevnik.bg/bulgaria/2016/04/10/2739769\\_borisov\\_dva\\_koraba\\_za\\_800\\_mln\\_lv\\_shte\\_budat\\_p\\_ostroeni/](http://www.dnevnik.bg/bulgaria/2016/04/10/2739769_borisov_dva_koraba_za_800_mln_lv_shte_budat_p_ostroeni/); [https://offnews.bg/news/Obshtestvo\\_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d\\_627393.html](https://offnews.bg/news/Obshtestvo_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d_627393.html).

<sup>6</sup> *Karaahmed v. Bulgaria*, judgment of 24 February 2015. Application no. 30587/13.

<sup>7</sup> *Inter alia, United Macedonian Organisation Ilinden and Others v. Bulgaria* (No. 2), judgment of 18 October 2011. Application no. 34960/04.

<sup>8</sup> See news reports at: <http://btvnovinite.bg/article/kriminalno/neizvestni-napadnaha-predsedatelja-na-bhk-nasred-sofija.html>; [http://clubz.bg/46257-napadnaha\\_i\\_biha\\_shefa\\_na\\_bylgarskiq\\_helzinski\\_komitet](http://clubz.bg/46257-napadnaha_i_biha_shefa_na_bylgarskiq_helzinski_komitet);



of a human rights NGO at the time, was questioned by the police within the framework of a prosecutorial check-up about public statements she made on winning an anti-Roma hate speech civil case against the current vice-premier, Valery Simeonov. This prosecutorial case is still pending.

People with disabilities suffer from exclusion and disadvantage in education, employment, access to services, participation. A significant share of children is excluded from schooling due to inaccessibility. Most are segregated in substandard remedial institutions. Many adults and children are segregated in social institutions where they suffer inhuman/ degrading treatment, and many die – human rights NGOs claim, due to neglect.<sup>9</sup> Abusers enjoy impunity, the authorities failing to investigate. The ECtHR has found Bulgaria liable for infringing persons with mental disabilities' rights in two notable cases.<sup>10</sup> The architectural environment for service provision is commonly inaccessible. The Supreme Administrative Court has found many enterprises and public bodies liable for keeping their buildings inaccessible.<sup>11</sup> LGBT suffer from hate speech and hate crime, as well as discrimination.

In 2014, the Supreme Administrative Court (SAC), the final instance reviewing equality body decisions, made new, restrictive interpretations of equality law.<sup>12</sup> According to SAC, not every breach of equality law is a breach that the equality body could declare, or sanction: only those that constituted administrative breaches under the Administrative Breaches and Sanctions Act. That requires establishing a concrete action/ omission, a concrete perpetrator, a concrete victim, and guilt. Discrimination has to be a concrete fact, and not a hypothetical possibility.<sup>13</sup> A discriminator can only be a natural person. Legal persons can be discriminators exceptionally, in cases provided for by law. A public authority cannot be a discriminator – only an individual exercising its authority. A legal provision cannot be discrimination as it is not a concrete action/ omission. The adoption of a legal provision is not a concrete action/ omission either. The equality body cannot declare laws to be discriminatory: a law that was not declared unconstitutional by the Constitutional Court (CC) could not be discriminatory. The equality body cannot declare secondary legislation to be discriminatory: secondary legislation that was not declared unlawful by SAC (under general administrative procedure) could not be discriminatory. Where the equality body finds a legal norm to contradict equality law, it cannot declare a breach of equality law. It cannot order the responsible authority to repeal/ amend that norm. It could only make a recommendation, or take legal action before SAC if secondary legislation is concerned.

In 2015, the SAC and the Supreme Court of Cassation ruled in interpretative proceedings No. 2/2014 before a mixed panel of the two courts in order to resolve the issue of whether the civil or the administrative courts are competent when a person wishes to sue a public body for discrimination.<sup>14</sup> The case law has been contradictory since 2007. The courts held that the administrative, and not the civil courts are competent. However, in 2017, the Supreme Administrative Court held in at least three cases that the civil, and not the

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<http://www.bghelsinki.org/bg/novini/press/single/bhk-osyzhda-bezdejstvieto-na-instituciite-pri-poredna-proyava-na-tormoz-i-presledvane-na-organizaciyata/>.

<sup>9</sup> See, for instance, the application brought against Bulgaria by the Bulgarian Helsinki Committee before the European Court of Human Rights in the name of two such deceased children:

[http://hudoc.echr.coe.int/eng#{"appno":\["35653/12"\],"itemid":\["001-156281"\]}](http://hudoc.echr.coe.int/eng#{).

<sup>10</sup> *Stanev v. Bulgaria*, judgment of 17 January 2012; *Stefan Stankov c. Bulgarie*, judgment of 17 March 2015.

<sup>11</sup> Inter alia, Supreme Administrative Court, Decision No. 158 of 08.01.2015 in case No. 7092/2014; Decision No. 5748 of 16 May 2016 in case No. 5495/2015; Decision No. 4922 of 26 April 2016 in case No. 11652/2015; Decision No. 6956 of 9 June 2016 in case No. 6376/2015; Decision No. 9030 of 19 July 2016 in case No. 4992/2015; Decision No. 17 of 4 January 2016 in case No. 1076/2015.

<sup>12</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013 and Decision No. 15637 in case No. 1925/2014. This is also reported in Sections 11.1 and 12.2 of this report.

<sup>13</sup> Supreme Administrative Court, Decision No. 15637 of 19.12.2014 in case No. 1925/2014. The case concerned the application of an age bar under secondary legislation.

<sup>14</sup> By Order (Разпореждане) of 27.06.2014, available at: [http://www.vks.bg/Dela/2014-02-BKC\\_BAC%20Разпореждане%20за%20образуване.pdf](http://www.vks.bg/Dela/2014-02-BKC_BAC%20Разпореждане%20за%20образуване.pdf) (in BG).

administrative courts, were competent to hear compensation claims where no equality body proceedings took place prior to the filing of the claim.<sup>15</sup> The legal situation remains unclear and unpredictable.

In 2015, the CJEU delivered a preliminary ruling in a case concerning the inaccessibility of electric meters in predominantly Roma residential areas. The service provider installed the meters at an inaccessible height allegedly in order to prevent alleged theft of electricity and damage to the infrastructure. The CJEU held that the measure was discriminatory as in non-Roma areas meters are accessible for consumer viewing.<sup>16</sup>

## **2. Main legislation**

The Protection Against Discrimination Act (PADA) 2004 is the main anti-discrimination law, enacted to transpose the directives.<sup>17</sup> It is a single equality law universally banning discrimination on a range of grounds, including race/ethnicity, sex, religion/belief, sexual orientation, disability and age, and providing uniform standards of protection and remedies. PADA as a whole complies with the directives, going beyond them in significant aspects: universal material scope, extended, open-ended list of grounds, additional forms of discrimination, extended equality body powers, and special judicial redress. PADA is actively invoked by individuals before the equality body and the courts, and the case law is extensive and growing.

Another equality law is the ground-specific Integration of Persons with Disabilities Act (IPDA),<sup>18</sup> listing positive and reasonable accommodation duties in a number of fields. Other laws, governing specific fields, such as education, employment, public procurement, provide for positive measures on grounds of disability, age, and caring responsibilities.

Older abstract bans of discrimination exist under laws governing specific fields, as well as the Constitution. They lack implementation. Bulgaria is bound by international instruments banning discrimination, including the European Convention on Human Rights (ECHR), the European Social Charter Revised, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Race Discrimination, the Convention on the Rights of the Child. The Constitution and binding international law are directly applicable by domestic courts, and supersede conflicting legislation. They are enforceable against private parties, as well as public bodies.

## **3. Main principles and definitions**

PADA prohibits and defines direct and indirect discrimination, including discrimination by association and by presumption. PADA defines direct discrimination as treating a person on protected grounds less favourably than another person is treated, has been treated, or would be treated in comparable circumstances. PADA defines "on grounds of" as the actual, present or past, or assumed possession of one or more protected grounds by the person discriminated against, or by another person who is, in fact or presumably, associated with the person discriminated against, where the association is a cause for discrimination. PADA does not permit general justification for direct discrimination.

PADA provides for illustrative bans on specific discriminatory conduct in employment, education, and service provision. It provides for an exhaustive list of specific exceptions

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<sup>15</sup> Supreme Administrative Court Decision No. 8753 of 5 July 2017 in case No. 8115/2016, Decision No. 8583 of 4 July 2017 in case No. 7679/2015, Ruling (Определение) No. 9034 of 11 July 2017 in case No. 6859/2017.

<sup>16</sup> Judgment of 16 July 2015 in Case C-83/14.

<sup>17</sup> Закон за защита от дискриминация, adopted September 2003, entered into force January 2004.

<sup>18</sup> Закон за интеграция на хората с увреждания, adopted September 2004, entered into force January 2005.

for all protected grounds, including for genuine and determining occupational requirements, for employers with a religious ethos, and for maximum and minimum ages for access to employment and education, requiring objective justification. It exempts different treatment of non-nationals provided for under law, and permits unjustified requirements for age and length of service for purposes of retirement. Positive measures aimed for disadvantaged groups are allowed.

PADA defines indirect discrimination as putting a person on protected grounds, through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

PADA expressly provides that harassment, incitement to discrimination, and victimisation constitute forms of discrimination. It defines harassment as any unwanted conduct related to protected grounds and manifested physically, verbally or in any other way that has the purpose or effect of violating the dignity of a person and of creating a hostile, offensive, or intimidating environment. Protection covers harassment by presumption and association. Incitement to discrimination is defined as direct and intentional encouragement of discrimination, including giving an instruction to discriminate. Victimisation is defined as: a) less favourable treatment of a person who has taken, or is presumed to have taken, or to be taking in future any action against discrimination; b) less favourable treatment of a person where a person associated with them has taken, or is presumed to have taken, or to be taking any action against discrimination; c) less favourable treatment of a person who refused to discriminate. Action for protection against discrimination is defined to include, but is not limited to, bringing proceedings before the equality body or the court, or testifying.

These definitions apply to all grounds. Multiple discrimination is defined as discrimination on more than one protected grounds. PADA places a positive duty on public bodies to take as a priority positive measures for victims of multiple discrimination. Under PADA, the equality body hears cases of multiple discrimination in benches of five rather than three members. The case law has failed to deal with the issues surrounding multiple discrimination.

PADA defines racial segregation, providing that it is a form of discrimination. It provides for reasonable accommodation for persons with disabilities in employment and education. The limit of this duty is when "the costs are unreasonably big and would seriously hinder" the employer or educator. Under IPDA, the Minister of Education has a duty to provide children with disabilities with a supportive environment for integrated education. This is an absolute duty. Under IPDA, the Minister has a duty to create educational opportunities for children with disabilities who are not integrated. This duty, too, is absolute. Higher education institutions, too, have absolute accommodation duties.

Under PADA, authorities, employers and educators have duties to mainstream equality and to take positive measures on all grounds. Liability is provided for abettors of discrimination, as well as vicarious liability for employers and educators who fail to prevent discrimination by third parties at the work- or study place. A shift of the burden of proof is envisaged. In 2015, the provision for shift of the burden of proof was amended to make it clearer that claimant is not required to produce conclusive proof but only to establish prima facie evidence of discrimination. The provision (Article 9 PADA) now reads (emphasis added): "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." The former language was: "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."

#### **4. Material scope**

PADA has a universal scope. It is applicable to any field, implicitly including all fields under the directives, as well as any beyond. This universal ban applies to all grounds and to both private and public sectors.

#### **5. Enforcing the law**

PADA provides for two alternatives: judicial proceedings before the general courts and specialised quasi-judicial proceedings before the equality body. A victim can choose. The courts can make a declaration of discrimination and award compensation, as well as order respondent to take remedial action, or to abstain from or to terminate particular action/inaction. PADC can make a finding of discrimination, and order preventive or remedial action. It can impose financial sanctions. It cannot award compensation. Both procedures are universally applicable to both the public and private sectors. They are legally binding. The principle of the shifting burden of proof applies to both. Both are used in practice. Both are exempt from fees and costs under the law, but in practice the courts do not respect this provision and order parties to pay.

There have been very few cases where judges have found discrimination based solely on respondent's failure to rebut an inference of discrimination. However, they have consistently taken account of the special evidentiary rule, and some have issued sound *dicta* on it. Judges have inconsistent understanding of the difference between direct and indirect discrimination, resulting in misinterpretation of direct discrimination as justifiable indirect discrimination.

Under PADA, PADC assists victims of discrimination. In practice, complainants are provided with procedural advice on filing their complaints. PADC has standing to take court proceedings, as well as to join proceedings. It has not used these possibilities. NGOs actively litigate discrimination cases. They have standing to represent complainants in court, as well as to intervene in proceedings in their support. NGOs have standing to take public interest court action on their own behalf where the rights of many persons are infringed without authorisation from a victim. They have standing to initiate proceedings before PADC without identifying any victim. NGOs have brought a range of public interest cases. This has enhanced public attention. Certain strong decisions were rendered, with the potential to bring about social change. Discrimination litigation, especially by NGOs, receives media coverage. NGOs have used situational testing to uncover and document direct discrimination, and have established such cases in court with the help of testing testimony. They have also used statistics in some cases. Under civil procedural law, both statistics and testing evidence are implicitly admissible at the discretion of judges. There has been no discussion on the admissibility of statistics or testing. Testing testimony has been admitted as a matter of course as ordinary witness testimony without reference being made to testing's specific public interest aim. Statistical data, too, has been considered as regular proof by both the equality body and judges. PADC has looked at statistical data of its own motion.

Sanctions for discrimination imposed by PADC include fines (maximum EUR 1 250), and binding instructions for respondents to take particular preventive or remedial action. PADC actively uses its sanctioning powers, often imposing close to maximum fines, and ordering remedies, such as reinstatement, amendment of regulations, etc. It is unclear, however, to what extent these orders are complied with in practice, and how effective official response is in cases where they are not. In such cases, the body has no formal power other than to impose further fines. Court-ordered redress includes compensation with no maximum limit, and orders on respondents to take, or to abstain from specific action. In exceptional cases, awards have reached EUR 5 000 (architectural inaccessibility).

Under labour law, persons with disabilities are entitled to employment quotas and employer subsidies. Younger and older workers, as well as people with caring responsibilities enjoy preferential treatment in employment too. Roma are nominally the beneficiaries of a number of positive programmes in education, housing and other fields, but those measures' impact in practice has been limited.

There is no dialogue or consultation with NGOs or social partners on the part of any national authorities.

## **6. Equality bodies**

The Protection Against Discrimination Commission (PADC) is the national specialised equality body. It was set up under PADA as an independent collegiate semi-judicial authority with adjudicating powers. It started operating in 2005 even though the law required it do so as of the start of 2004. PADC deals with discrimination on all protected grounds. It has a mandate to: hear and investigate complaints by victims and communications by third parties; initiate its own proceedings; find discrimination by legally binding decisions; impose financial sanctions; issue mandatory instructions for remedial or preventative redress; review and give opinions on draft legislation; make recommendations to public authorities, incl. for legislative change; assist victims of discrimination; carry out independent research and publish independent reports. PADC has a vast and growing body of case law, some of it effective. The case law includes rulings by the Sofia City Administrative Court and the Supreme Administrative Court which review PADC decisions.

## **7. Key issues**

The definition of incitement to discrimination, including instructions to discriminate, under PADA expressly requires direct intent. The definition of racial segregation under PADA expressly requires the state of separation to be 'forced'.<sup>19</sup> It implies that segregation may be chosen, i.e. that persons may waive their right not to be discriminated against, including not to be racially segregated. The ECtHR has held in Roma segregation cases that no waiver of the right to non-discrimination in this context is possible as that would conflict with an important public interest.<sup>20</sup>

PADA defines indirect discrimination in a way that misleads judges and PADC to conflate it with (covert) direct discrimination. The language of the definition refers to "on grounds of", which contradicts the "apparently neutral" part of the wording. A number of court and PADC decisions have read the phrase "on grounds of" as defining a causal link between the apparently neutral rule and the particular protected ground/s. That reading is apparently based on an assumption that "an apparently neutral" act is one that, albeit based on a protected ground, is not openly so but is covert; therefore, they take the provision for indirect discrimination to refer to dissimulated direct discrimination.<sup>21</sup> Generally, judges and PADC do not have a good understanding what indirect discrimination is.

Parallel to PADA, other, pre-existing abstract prohibitions of discrimination are still in place under other laws governing specific fields, as well as the Constitution. There is no coherence between PADA and those other, older, bans on discrimination, with differences

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<sup>19</sup> PADA, Additional Provision, § 1.6.

<sup>20</sup> For instance, *D.H. v. Czech Republic*, judgment of 13.11.2007; *Sampanis v. Greece*, judgment of 05.06.2008; *Orsus v. Croatia*, judgment of 16.03.2010 (GC).

<sup>21</sup> For instance: Radnevo District Court, Decision No. 97 of 13.12.2004, case No. 365/2004; Sofia Regional Court, Decision of 12.07.2004, case No. 1184/2004; Sofia District Court, Decision of 19.08.2004, case No. 1262/2004; Sofia District Court, Decision of 19.12.2006, case No. 2756/2006. Decisions of the Supreme Administrative Court: Decision No. 11421 of 19.11.2007, case No. 5604/2007; Decision No. 12117 of 3.12.2007, case No. 8044/2007; Decision No. 4752 of 15.05.2007, case No. 11478/2006; Decision No. 11295 of 16.11.2007, case No. 6407/2007; Decision No. 13393 of 28.12.2007, case No. 8083/2007; Decision No. 7811 of 19.07.2007, case No. 1048/2007.

in protected grounds, exceptions, and definitions. There is inconsistency between PADA and other laws governing particular fields that provide for directly or indirectly discriminatory norms, contradicting PADA's universal ban. Next to no effort has been made to harmonise the legislation so as to ensure that PADA prevails over other conflicting, discriminatory norms.

In 2014, SAC made restrictive requirements for PADA enforcement, contradicting PADA and EU law.<sup>22</sup>

SAC has held that, for discrimination to be at hand, a difference of treatment should be based *solely* on a protected ground, excluding „mixed motives“ cases where a protected characteristic was one among other reasons for less favourable treatment.<sup>23</sup> At the same time, SAC is inconsistent: in a recent case, it held that „discriminatory treatment is at hand regardless of whether a protected ground is the only, or one of the reasons for less favourable treatment.<sup>24</sup> As mentioned, SAC has applied the justification test only relevant for indirect discrimination to cases of less favourable treatment, i.e. direct discrimination. It has applied the concept of indirect discrimination to a number of cases of direct less favourable treatment. For instance, in 2014, in a case where a Muslim prison inmate complained that his food included pork (denial of reasonable accommodation), SAC held that there was indirect discrimination against this complainant compared to Muslim inmates in another prison who did receive food accommodation.<sup>25</sup>

In some cases, SAC has shown a serious lack of understanding of the concept of a comparator, holding that age requirements for access to employment did not constitute discrimination because they applied to all candidates, and not just the complainant.<sup>26</sup> SAC has required intent, often holding expressly that “treatment [must be] carried out *knowingly* on one of the [protected] grounds”.<sup>27</sup> As mentioned, in 2014, SAC held twice that only conduct that was “guilty” could qualify as a breach under PADA.<sup>28</sup> At the same time, its case law is contradictory: on one occasion in 2014, SAC held that “direct discrimination did not require discriminatory intent, therefore, the lack of such is irrelevant for qualifying treatment as discriminatory, including where it was based on an understanding that it was lawful”.<sup>29</sup> In a 2014 case, SAC interpreted “sexual orientation” as having to be innate, and not “consciously” chosen, in order to be protected. SAC denied asylum protection to a gay Cameroonian because he “decided”, at age 35, to “choose” a sexuality that was not his “innate” one.<sup>30</sup>

PADC does not use its powers, including its competence to start *ex officio* proceedings, in any strategic way. It has no priorities. It has failed to target serious issues of discrimination, such as Roma segregation in education, Roma destitution and isolation in housing, people with disabilities' institutionalization, etc. PADC, as a rule, refuses to consider (on admissibility) or uphold (on the merits) discrimination complaints by persons with disabilities who failed to produce medical proof of their disability.<sup>31</sup> PADC, like SAC, often shows a lack of understanding of indirect discrimination, in some cases fusing it with direct discrimination.

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<sup>22</sup> See p. 7 above.

<sup>23</sup> *Inter alia*, Supreme Administrative Court, Decision No. 8277 of 11.06.2012 in case No. 3852/2012.

<sup>24</sup> Supreme Administrative Court, Decision No. 274 of 09.01.2012 in case No. 1319/2011.

<sup>25</sup> Supreme Administrative Court, Decision No. 2514 of 21.02.2014, case No. 10989/2013.

<sup>26</sup> Supreme Administrative Court, Decision No. 7096 of 19.05.2012 in case No.3686/2012; Decision No. 10734 of 1.09.2014 in case No. 1463/2014.

<sup>27</sup> *Inter alia*, Supreme Administrative Court, Decision No. 8277 of 11.06.2012 in case No. 3852/2012; Decision No. 3645 of 14.03.2014 in case No. 12679/2013 (“conscious” perpetration requirement reiterated twice).

<sup>28</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013, Decision No. 15637 in case No. 1925/2014.

<sup>29</sup> Supreme Administrative Court, Decision No. 1048 of 27.01.2014 in case No. 8033/2013. The case concerned the application of an age bar under a university's regulations.

<sup>30</sup> Supreme Administrative Court, Decision No. 9467 of 7.07.2014 in case No. 1381/2014.

<sup>31</sup> *Inter alia*, PADC, Decision No. 259 of 17.12.2008 in case No. 186/2008.

## RÉSUMÉ

### 1. Introduction

Les groupes vulnérables sont les Roms, les réfugiés/les migrants, les Musulmans, les Juifs, les groupes religieux non traditionnels, les Macédoniens, les Turcs, les personnes handicapées (atteintes de troubles mentaux surtout) et les personnes LGBT. L'actuel gouvernement dirige le pays en coalition avec deux partis que la Commission européenne contre le racisme et l'intolérance qualifie d'«ultranationalistes/fascistes»: le Front national pour le salut de la Bulgarie et le VMRO-BND.<sup>32 33</sup> La discrimination et la haine (en ce compris le discours haineux et le crime de haine) à l'égard des Roms constituent un phénomène largement répandu, radical et impuni. De hauts fonctionnaires n'hésitent pas à inciter ouvertement à la haine et à la discrimination envers les Roms, qu'ils dépeignent comme des sous-hommes – et ni le ministère public ni l'organisme pour l'égalité, légalement habilité à agir en cas de discours de haine, n'interviennent.

Les Roms vivent en logements ségrégués dans des conditions extrêmement précaires et font souvent l'objet d'expulsions forcées arbitraires et collectives. La Cour européenne des droits de l'homme (CouEDH) a conclu à la responsabilité de la Bulgarie dans le cadre d'une affaire de ce type.<sup>34</sup> Les Roms sont durement touchés par le chômage de longue durée et ne peuvent accéder ni à la formation ni à l'emploi. Ils se heurtent à une discrimination, et notamment à un harcèlement, en termes d'accès aux soins de santé et aux services. Les enfants roms étudient dans des écoles séparées qui dispensent un enseignement de qualité médiocre, ou ne sont pas scolarisés du tout. Le système de justice pénale les prend pour cible en les poursuivant de façon disproportionnée et leur refuse l'égalité de protection conférée par la loi, y compris à l'encontre de délits motivés par la haine commis tant par des fonctionnaires que par des civils. Leur représentation n'est pas assurée et ils ne peuvent participer aux processus décisionnels à aucun niveau.

Les discours et crimes de haine à l'encontre des réfugiés/migrants sont en forte progression, y compris des discours de haine de la part de fonctionnaires. Les violences restent impunies. La CouEDH a conclu à la responsabilité de la Bulgarie dans une affaire de ce type.<sup>35</sup> En 2016, des groupes d'autodéfense ont surgi dans la région frontalière où ils ciblent les étrangers et les soumettent à une détention illégale motivée par la haine, à des agressions verbales, à la contrainte, à des violences physiques et à d'autres crimes au regard du droit national. Les auteurs de ces faits ont bénéficié d'une visibilité nationale positive via les principaux médias, ainsi que d'une plateforme à partir de laquelle inciter à la haine et au crime haineux organisé envers les réfugiés/les migrants. L'ex-Premier ministre Borisov a publiquement déclaré qu'il remerciait les auteurs de tels actes pour l'aide qu'ils apportent à l'État, et que toute forme d'aide était la bienvenue.<sup>36</sup> Un seul activiste membre d'un groupe d'autodéfense a été poursuivi au pénal, mais en vain. De nombreux demandeurs d'asile vivent dans des conditions inhumaines. Les Juifs, les Musulmans, les groupes religieux non traditionnels et les Turcs sont visés par des actes de haine tels que la profanation de lieux de culte et des manifestations violentes. La CouEDH a jugé la Bulgarie responsable dans une affaire de ce type.<sup>37</sup> Les Macédoniens sont privés de la reconnaissance de leur identité (ils sont considérés comme des Bulgares) et les tribunaux refusent d'enregistrer leurs organisations. Les autorités locales interfèrent dans

<sup>32</sup> Organisation révolutionnaire macédonienne intérieure – Mouvement national bulgare.

<sup>33</sup> ECRI, Rapport sur la Bulgarie, publié le 16 septembre 2014.

<sup>34</sup> Affaire *Yordanova et autres contre Bulgarie*, arrêt du 24 avril 2012. Requête n° 25446/06.

<sup>35</sup> Affaire *Abdu contre Bulgarie*, arrêt du 11 mars 2014. Requête n° 26827/08.

<sup>36</sup> Voir articles de presse sur: <http://btvnovinite.bg/article/vodeshti-novini/bhk-sas-signal-sreshtu-premiera-bojko-borisov-zaradi-blagodarnostite-kam-dobrovolcheskite-otrjadi.html>; [http://www.dnevnik.bg/bulgaria/2016/04/10/2739769\\_borisov\\_dva\\_koraba\\_za\\_800 mln\\_lv\\_shte\\_budat\\_p\\_ostroeni/](http://www.dnevnik.bg/bulgaria/2016/04/10/2739769_borisov_dva_koraba_za_800 mln_lv_shte_budat_p_ostroeni/); [https://offnews.bg/news/Obshtestvo\\_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d\\_627393.html](https://offnews.bg/news/Obshtestvo_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d_627393.html).

<sup>37</sup> *Karahmed contre Bulgarie*, arrêt du 24 février 2015. Requête n° 30587/13.

leurs rassemblements pacifiques. La CouEDH a conclu à la responsabilité de la Bulgarie dans plusieurs affaires de ce type.<sup>38</sup> La Bulgarie est placée sous la surveillance renforcée du Comité des ministres du Conseil de l'Europe pour défaut d'exécution de ces arrêts.

Des défenseurs des droits de l'homme ont été visés par des violences verbales et physiques en raison de leurs activités en soutien des réfugiés/des migrants et d'autres minorités particulièrement marginalisées, parmi lesquelles les Roms et la communauté LGBT.<sup>39</sup> Une avocate spécialisée en droits de l'homme, directrice juridique d'une ONG à l'époque, a été interrogée par la police dans le cadre d'un contrôle judiciaire portant sur ses déclarations publiques après avoir obtenu gain de cause dans des poursuites au civil à l'encontre de l'actuel vice-Premier ministre, Valeri Simeonov, pour discours haineux envers les Roms. Cette procédure judiciaire est toujours en cours.

Les personnes handicapées sont victimes d'exclusion et font l'objet d'un traitement défavorisé en matière d'enseignement, d'emploi, d'accès aux services et de participation. Une proportion importante d'enfants handicapés ne sont pas scolarisés en raison de l'inaccessibilité des bâtiments et la plupart d'entre eux sont inscrits dans des établissements séparés qui dispensent un enseignement de rattrapage de piètre qualité. De nombreux adultes et enfants handicapés sont placés dans des foyers sociaux où ils sont souvent victimes de traitements inhumains/dégradants; beaucoup y meurent – par négligence, selon des ONG de défense des droits de l'homme.<sup>40</sup> Les auteurs de ces faits bénéficient d'une totale impunité du fait que les autorités ne procèdent à aucune enquête. La CouEDH a déclaré dans deux affaires notoires<sup>41</sup> que la Bulgarie n'avait pas respecté les droits des personnes atteintes de troubles mentaux. L'environnement architectural dans lequel des services sont prestés est le plus souvent inaccessible. La Cour suprême administrative a jugé plusieurs entreprises et organismes publics responsables du maintien de l'inaccessibilité de leurs bâtiments.<sup>42</sup> Les personnes LGBT sont victimes de discours et de crimes de haine, ainsi que de discrimination.

En 2014, la Cour suprême administrative – instance statuant en dernier ressort sur les décisions de l'organisme pour l'égalité – a formulé de nouvelles interprétations restrictives de la législation en matière d'égalité.<sup>43</sup> Selon elle, un non-respect de cette législation ne constitue pas nécessairement une infraction pouvant être notifiée ou sanctionnée par l'organisme pour l'égalité: il faut qu'il s'agisse d'une infraction administrative en vertu de la loi relative aux infractions et sanctions administratives – ce qui exige d'établir une action/omission réelle, un auteur réel, une victime réelle et une culpabilité. La discrimination doit être un fait concret et non une possibilité hypothétique.<sup>44</sup> L'auteur d'une discrimination ne peut être qu'une personne physique – les personnes morales ne pouvant être les auteurs de faits discriminatoires que dans des cas exceptionnels prévus par la loi. Une autorité publique ne peut être l'auteur d'une discrimination: ce dernier ne peut être que la personne exerçant des pouvoirs au nom de la dite autorité. Une disposition légale

<sup>38</sup> Notamment *Organisation macédonienne unie Ilinden et autres contre Bulgarie* (n° 2), arrêt du 18 octobre 2011. Requête n° 34960/04.

<sup>39</sup> Voir articles de presse sur: <http://btvnovinite.bg/article/kriminalno/neizvestni-napadnaha-predsedatelja-na-bhk-nasred-sofija.html>; <http://clubz.bg/46257-napadnaha-i-biha-shefa-na-bylgarskiq-helzinski-komitet>; <http://www.bghelsinki.org/bg/novini/press/single/bhk-osyzhda-bezdejstviето-na-instituciite-pri-poredna-proyava-na-tormoz-i-presledvane-na-organizaciyata/>.

<sup>40</sup> Voir notamment la requête introduite contre la Bulgarie par le Comité Helsinki bulgare devant la Cour européenne des droits de l'homme au nom de deux enfants décédés dans ces conditions: [http://hudoc.echr.coe.int/eng?i=001-156281#{"itemid":\["001-156281"\]}](http://hudoc.echr.coe.int/eng?i=001-156281#{).

<sup>41</sup> *Stanev contre Bulgarie*, arrêt du 17 janvier 2012; *Stefan Stankov contre Bulgarie*, arrêt du 17 mars 2015.

<sup>42</sup> Voir entre autres Cour suprême administrative, décision n° 158 du 8 janvier 2015 dans l'affaire n° 7092/2014; décision n° 5748 du 16 mai 2016 dans l'affaire n° 5495/2015; décision n° 4922 du 26 avril 2016 dans l'affaire n° 11652/2015; décision n° 6956 du 9 juin 2016 dans l'affaire n° 6376/2015; décision n° 9030 du 19 juillet 2016 dans l'affaire n° 4992/2015; décision n° 17 du 4 janvier 2016 dans l'affaire n° 1076/2015.

<sup>43</sup> Cour suprême administrative, décision n° 5645 dans l'affaire n° 15991/2013 et décision n° 15637 dans l'affaire n° 1925/2014. Voir également les points 11.1 et 12.2 du rapport ci-après.

<sup>44</sup> Cour suprême administrative, décision n° 15637 du 19 décembre 2014 dans l'affaire n° 1925/2014. L'affaire concernait l'application d'une limite d'âge en vertu d'une législation dérivée.



ne peut être constitutive de discrimination du fait qu'il ne s'agit pas d'une action/omission concrète – l'adoption d'une disposition légale n'étant pas davantage considérée comme une action/omission concrète. L'organisme pour l'égalité ne peut déclarer qu'une loi est discriminatoire car une loi qui n'a pas été déclarée inconstitutionnelle par la Cour constitutionnelle ne peut être discriminatoire. L'organisme pour l'égalité ne peut déclarer qu'une législation dérivée est discriminatoire car une législation dérivée qui n'a pas été déclarée illégale par la Cour suprême administrative (dans le cadre d'une procédure administrative générale) ne peut être discriminatoire. Lorsque l'organisme pour l'égalité constate qu'une disposition juridique est en contradiction avec la législation en matière d'égalité, il ne peut faire valoir un non-respect de cette dernière, ni ordonner à l'autorité compétente d'abroger/de modifier la disposition en cause: il peut uniquement formuler une recommandation ou saisir la Cour suprême administrative s'il s'agit d'une législation dérivée.

En 2015, la Cour suprême administrative et la Cour suprême de cassation se sont prononcées dans le cadre de la procédure interprétative n° 2/2014 devant un collège composé de membres des deux juridictions en vue de résoudre la question de savoir si ce sont les juridictions civiles ou les juridictions administratives qui sont compétentes lorsqu'une personne souhaite poursuivre un organisme public pour discrimination.<sup>45</sup> La jurisprudence s'avérait contradictoire depuis 2007. Elles ont conclu à la compétence des juridictions administratives, et non des juridictions civiles. En 2017 toutefois, la Cour suprême administrative a considéré dans trois affaires au moins que les tribunaux civils, et non les tribunaux administratifs, étaient compétents en matière de demandes d'indemnisation lorsqu'aucune action n'a été engagée auprès de l'organisme pour l'égalité préalablement au dépôt du recours.<sup>46</sup> La situation juridique reste floue et imprévisible.

En 2015, la CJUE a rendu une décision préjudicielle dans une affaire relative à l'inaccessibilité des compteurs électriques dans des quartiers principalement habités par des Roms. Le prestataire de services a installé les compteurs à une hauteur impossible à atteindre prétendument pour éviter les branchements illicites et les dommages à l'infrastructure. La CJUE a jugé la mesure discriminatoire étant donné que, dans les quartiers non roms, les compteurs sont accessibles et peuvent être consultés par les consommateurs.<sup>47</sup>

## **2. Législation principale**

La loi de 2004 sur la protection contre la discrimination,<sup>48</sup> adoptée en vue de transposer les directives, constitue l'acte législatif principal de lutte contre la discrimination. Il s'agit d'une loi unique qui interdit universellement toute discrimination fondée sur une série de motifs comprenant la race/l'origine ethnique, le sexe, la religion/les convictions, l'orientation sexuelle, le handicap et l'âge, et qui prescrit des normes uniformes en matière de protection et de recours. La loi sur la protection contre la discrimination est globalement conforme aux directives et va au-delà de celles-ci à certains égards importants: champ d'application matériel universel, liste élargie et ouverte de motifs, formes supplémentaires de discrimination, compétences étendues de l'organisme pour l'égalité, et recours juridictionnel particulier. La loi sur la protection contre la discrimination est activement invoquée par des requérants individuels devant l'organisme pour l'égalité ou les tribunaux, et la jurisprudence est abondante et croissante.

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<sup>45</sup> Par disposition (Разпореждане) du 27 juin 2014, disponible sur: [http://www.vks.bg/Dela/2014-02-BKC\\_BAC%20Разпореждане%20за%20образуване.pdf](http://www.vks.bg/Dela/2014-02-BKC_BAC%20Разпореждане%20за%20образуване.pdf) (en bulgare).

<sup>46</sup> Cour suprême administrative, décision n° 8753 du 5 juillet 2017 dans l'affaire n° 8115/2016; décision n° 8583 du 4 juillet 2017 dans l'affaire n° 7679/2015, arrêt (Определение) n° 9034 du 11 juillet 2017 dans l'affaire n° 6859/2017.

<sup>47</sup> Arrêt du 16 juillet 2015 dans l'affaire C-83/14.

<sup>48</sup> Закон за защита от дискриминация, adoptée en septembre 2003 et entrée en vigueur en janvier 2004.

Il existe une autre loi importante concernant l'égalité, en l'occurrence la loi relative à l'intégration des personnes handicapées,<sup>49</sup> qui précise les obligations d'action positive et d'aménagement raisonnable dans un certain nombre de domaines. D'autres lois, régissant des domaines spécifiques tels que l'éducation, l'emploi et les marchés publics prévoient des mesures positives en rapport avec des motifs tels que le handicap, l'âge et les responsabilités de garde et de soins.

D'autres interdictions de discrimination préexistantes et abstraites existent dans des lois régissant des domaines spécifiques ainsi que dans la Constitution. Leur mise en œuvre fait toutefois défaut. La Bulgarie est liée par des instruments internationaux proscrivant la discrimination: la Convention européenne des droits de l'homme (CEDH), la Charte sociale européenne révisée, le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et la Convention relative aux droits de l'enfant. La Constitution et la législation internationale contraignante sont directement applicables par les juridictions nationales et prévalent sur les dispositions contraires figurant dans l'ordre juridique interne. Elles sont exécutoires à l'encontre de parties privées et à l'encontre d'organismes publics.

### **3. Principes généraux et définitions**

La loi sur la protection contre la discrimination interdit et définit la discrimination directe et indirecte, y compris la discrimination par association et par présomption. Elle définit la discrimination directe comme le fait de traiter, en raison de l'un des motifs protégés, une personne de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable. La loi définit «en raison de l'un des motifs» comme l'existence réelle – actuelle ou passée – ou l'existence présumée d'un ou de plusieurs des motifs protégés chez la personne visée par la discrimination, ou chez une autre personne qui est, de façon réelle ou présumée, associée à la personne visée par la discrimination lorsque l'association est une cause de discrimination. La loi sur la protection contre la discrimination n'autorise pas de justification générale de discrimination directe.

La loi sur la protection contre la discrimination spécifie à titre d'exemples des comportements discriminatoires spécifiquement interdits dans les domaines de l'emploi, de l'éducation et de la fourniture de services. Elle contient une liste exhaustive d'exceptions particulières pour l'ensemble des motifs protégés, y compris pour des exigences professionnelles essentielles et déterminantes, dans le cas d'employeurs ayant une éthique religieuse ainsi qu'en ce qui concerne l'âge maximum et minimum pour l'accès à l'emploi et à l'éducation – une justification objective étant requise. La loi exempte le traitement différencié des non-ressortissants prévu par la loi et autorise des exigences non justifiées en termes d'âge et d'ancienneté pour ce qui concerne la retraite. Les mesures positives en faveur de groupes défavorisés sont autorisées.

La loi sur la protection contre la discrimination définit la discrimination indirecte comme le fait de traiter une personne de manière moins favorable que d'autres personnes, en raison de l'un des motifs protégés et par le biais d'une disposition, d'un critère ou d'une pratique apparemment neutre, à moins que cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un but légitime et que les moyens d'atteindre ce but soient appropriés et nécessaires.

La loi sur la protection contre la discrimination prévoit expressément que le harcèlement, l'incitation à la discrimination et la rétorsion constituent des formes de discrimination. Elle définit le harcèlement comme tout comportement non désiré lié aux motifs protégés, qui se manifeste physiquement, verbalement ou de toute autre manière et qui a pour objet ou

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<sup>49</sup> Закон за интеграция на хората с увреждания, adoptée en septembre 2004 et entrée en vigueur en janvier 2005.

pour effet de porter atteinte à la dignité d'une personne et de créer un environnement hostile, offensant ou intimidant. La protection couvre le harcèlement par présomption et par association. L'incitation à la discrimination est définie comme un encouragement direct et intentionnel à discriminer, en ce compris l'injonction de pratiquer une discrimination. La rétorsion est définie comme: a) le fait de traiter moins favorablement une personne qui a entrepris, ou qui est présumée avoir entrepris, ou qui est présumée entreprendre un jour, une action contre une discrimination; b) le fait de traiter moins favorablement une personne lorsqu'une personne qui lui est associée a entrepris, ou est présumée avoir entrepris, ou est présumée entreprendre une action contre une discrimination; c) le fait de traiter moins favorablement une personne qui a refusé de pratiquer un acte discriminatoire. Une action en vue d'une protection contre une discrimination est définie comme incluant, sans s'y limiter, le fait d'entamer des poursuites devant l'organisme pour l'égalité ou un tribunal, ou de témoigner.

Ces définitions s'appliquent à tous les motifs. La discrimination multiple est définie comme une discrimination fondée sur plus d'un des motifs protégés. La loi sur la protection contre la discrimination impose aux organismes publics l'obligation positive de prendre, en priorité, des mesures positives en faveur de victimes de discrimination multiple. Elle dispose que l'organisme pour l'égalité se composera de cinq membres au lieu de trois lorsqu'il est saisi de questions liées à une discrimination multiple.

La loi sur la protection contre la discrimination définit la ségrégation raciale en stipulant qu'il s'agit d'une forme de discrimination. Elle prévoit l'aménagement raisonnable pour les personnes handicapées dans les domaines de l'emploi et de l'éducation tout en limitant cette obligation si le coût devait en être excessif au point de préjudicier l'employeur ou l'éducateur. En vertu de la loi sur l'intégration des personnes handicapées, le ministre de l'Éducation a l'obligation de fournir aux enfants handicapés un environnement propice à leur intégration éducative. Il s'agit d'une obligation absolue. En vertu de la même loi, le ministre de l'Éducation est tenu de créer des possibilités d'enseignement pour les enfants handicapés qui ne sont pas intégrés, et cette obligation est également absolue. Les établissements d'enseignement supérieur ont, eux aussi, des obligations absolues en matière d'aménagement.

La loi sur la protection contre la discrimination impose aux autorités, aux employeurs et aux éducateurs l'obligation de généraliser l'égalité et de prendre des mesures positives en rapport avec l'ensemble des motifs. La responsabilité des complices de discrimination, de même que la responsabilité du fait d'autrui pour les employeurs et les éducateurs qui ne prennent pas de dispositions destinées à prévenir la discrimination commise par des tiers sur le lieu de travail ou d'étude, est inscrite dans la loi. Un renversement de la charge de la preuve y est envisagé. En 2015, la disposition relative au renversement de la charge de la preuve a été modifiée afin de préciser que la partie requérante n'est pas tenue de fournir une preuve définitive: elle doit uniquement apporter un commencement de preuve de discrimination. La disposition (article 9 de la loi sur la protection contre la discrimination) est désormais libellée comme suit (italiques ajoutées): dans le cadre d'une procédure de protection contre une discrimination, après que la partie alléguant avoir fait l'objet d'une discrimination *produit (présente)* des faits permettant de *présumer* l'existence d'une discrimination, la partie défenderesse doit prouver qu'il n'y a pas eu violation du principe de l'égalité de traitement. Ladite disposition était antérieurement libellée comme suit: dans le cadre d'une procédure de protection contre une discrimination, après que la partie alléguant avoir fait l'objet d'une discrimination *prouve* des faits permettant de *conclure à* l'existence d'une discrimination, la partie défenderesse doit prouver qu'il n'y a pas eu violation du principe de l'égalité de traitement.

#### **4. Champ d'application matériel**

La loi sur la protection contre la discrimination a un champ d'application matériel universel. Il s'applique à tous les domaines, ce qui signifie qu'il couvre implicitement tous les

domaines visés par les directives ainsi que tout autre domaine qui ne serait pas couvert par celles-ci. Cette interdiction universelle s'applique à tous les motifs et tant au secteur privé qu'au secteur public.

## **5. Mise en application de la loi**

La loi sur la protection contre la discrimination prévoit deux possibilités: la procédure judiciaire devant les juridictions ordinaires et la procédure quasi-judiciaire spécialisée devant l'organisme pour l'égalité. La victime a le choix entre ces deux voies de recours. Les tribunaux peuvent établir l'existence d'une discrimination et accorder une indemnisation, et ordonner à la partie défenderesse de prendre des mesures correctives ou de s'abstenir d'une action ou inaction particulière ou d'y mettre fin. La commission pour la protection contre la discrimination peut elle aussi constater l'existence d'une discrimination et ordonner une mesure préventive ou corrective. Elle peut imposer des sanctions financières, mais ne peut accorder d'indemnisation. Les deux procédures s'appliquent universellement tant au secteur public qu'au secteur privé. Elles sont juridiquement contraignantes. Le principe du renversement de la charge de la preuve s'applique dans les deux cas. Les deux procédures sont effectivement utilisées et exemptes l'une et l'autre de frais et dépens; dans la pratique toutefois, les tribunaux ne respectent pas cette disposition et ordonnent aux parties de payer.

Rares ont été les affaires dans lesquelles les juges ont établi l'existence d'une discrimination en se basant uniquement sur l'incapacité de la partie défenderesse de réfuter les présomptions de discrimination. Ils ont toutefois systématiquement tenu compte de cette règle de preuve spéciale et certains ont émis des observations avisées sur ses conséquences quant à l'établissement des faits. Les juges ont une vision peu cohérente de la différence entre discrimination directe et indirecte – ce qui a donné lieu à de nombreuses reprises à une interprétation erronée faisant de cas de discrimination directe des cas de discrimination indirecte justifiable.

La loi prévoit que l'organisme pour l'égalité assiste les victimes de discrimination. Dans la pratique, les plaignants reçoivent des conseils de procédure sur la manière d'introduire leurs plaintes. La commission pour la protection contre la discrimination est habilitée à ester en justice ainsi qu'à s'associer à des actions intentées par d'autres, mais elle n'a guère fait usage de ces possibilités. Des ONG s'occupent activement d'affaires de discrimination: elles sont habilitées à représenter les plaignants devant les tribunaux et à intervenir en leur faveur dans le cadre de poursuites. Les ONG ont le droit d'intenter en leur propre nom, sans devoir obtenir l'autorisation d'une victime particulière, des actions en justice dans l'intérêt public lorsque les droits de nombreuses personnes ont été bafoués. Elles sont habilitées à saisir la commission pour la protection contre la discrimination sans identifier de victime particulière. Les ONG ont engagé toute une série de poursuites d'intérêt public, ce qui a mobilisé davantage l'attention du public. Plusieurs décisions fermes ont été rendues et pourraient susciter un certain changement social. Les procédures contentieuses bénéficient, surtout lorsqu'elles sont engagées par des ONG, d'une large couverture médiatique. Des ONG ont fait appel au test de situation pour dévoiler et étayer des cas de discrimination directe, et ont établi les cas en question en justice en utilisant ce type de preuve testimoniale. Elles ont également recouru aux statistiques dans quelques affaires. En vertu du droit procédural en matière civile, tant les statistiques que les tests de situation sont des éléments de preuve implicitement recevables laissés à l'appréciation des juges. Il n'y a eu aucun débat sur cette recevabilité. Le test de situation en tant que preuve testimoniale a été admis comme allant de soi, étant assimilé à une déposition de témoin ordinaire sans qu'il soit fait référence à son but spécifique d'intérêt public. Les données statistiques ont été elles aussi considérées comme des preuves ordinaires tant par les juges que par la commission pour la protection contre la discrimination. Cette dernière s'est penchée de sa propre initiative sur des données statistiques.

Les sanctions infligées par la commission pour la protection contre la discrimination comprennent des amendes (plafonnées à 1 250 euros) et des injonctions contraignant la partie défenderesse à prendre des mesures préventives ou correctives particulières. La commission exerce activement ses pouvoirs disciplinaires en imposant souvent le versement d'amendes proches du montant maximum et en ordonnant une réparation sous la forme d'une réintégration, de la modification de la réglementation, etc. Il s'avère difficile toutefois de déterminer dans quelle mesure ces injonctions sont suivies d'exécution et dans quelle mesure la réponse des autorités est efficace lorsque ce n'est pas le cas. L'organisme pour l'égalité ne dispose dans cette éventualité d'aucun autre pouvoir formel que celui d'infliger de nouvelles amendes. La réparation ordonnée par un tribunal comprend pour sa part une indemnisation non plafonnée et une injonction adressée à la partie défenderesse pour qu'elle prenne des mesures spécifiques ou qu'elle s'abstienne d'une action particulière. Les indemnisations ont atteint, à titre exceptionnel, un montant de 5 000 euros (inaccessibilité de l'environnement architectural).

Le droit du travail prévoit des quotas d'emploi pour les personnes handicapées et des subventions à l'intention de leurs employeurs. Un traitement préférentiel en matière d'emploi est également accordé aux travailleurs jeunes et âgés ainsi qu'aux personnes assumant des responsabilités de garde et de soins. Les Roms sont théoriquement bénéficiaires d'une série de programmes d'action positive dans les domaines de l'éducation, du logement et autres, mais l'impact de ces mesures reste, dans la pratique, très limité.

Il n'existe aucun processus de dialogue ni de consultation avec des ONG ou des partenaires sociaux de la part d'une quelconque autorité nationale.

## **6. Organismes de promotion de l'égalité de traitement**

La commission pour la protection contre la discrimination est l'organisme national bulgare spécialisé en charge des questions d'égalité. Elle a été instituée en vertu de la loi sur la protection contre la discrimination en tant qu'autorité collégiale semi-judiciaire dotée de pouvoirs de décision. Elle est entrée en fonction en 2005, bien que la loi prévoyait le démarrage de son activité dès le début 2004. La commission pour la protection contre la discrimination traite de la discrimination fondée sur tous les motifs protégés. Elle est mandatée pour entendre et instruire les plaintes déposées par des victimes et des signalements émanant de tiers; engager ses propres poursuites; établir l'existence d'une discrimination par des décisions juridiquement contraignantes; infliger des sanctions financières; formuler des instructions obligatoires en vue de mesures correctives ou préventives; examiner et donner un avis sur les projets de loi; adresser des recommandations aux autorités publiques, y compris en vue d'amendements législatifs; assister les victimes de discrimination; procéder à des études indépendantes et publier des rapports indépendants. La commission pour la protection contre la discrimination développe rapidement une jurisprudence abondante, suivie d'effet dans un certain nombre de cas. La jurisprudence comprend des décisions du tribunal municipal administratif de Sofia et de la Cour suprême administrative, qui contrôlent les décisions de la commission pour la protection contre la discrimination.

## **7. Points essentiels**

La définition de l'incitation à discriminer, y compris les injonctions de pratiquer une discrimination, figurant dans la loi sur la protection contre la discrimination requiert expressément une intention directe. Dans cette même loi, la définition de la ségrégation raciale exige que la situation de séparation soit «forcée»<sup>50</sup> – ce qui implique que la ségrégation pourrait être délibérément choisie, autrement dit que des personnes renoncent à leur droit de ne pas faire l'objet d'une discrimination, et notamment de ne pas faire l'objet d'une ségrégation raciale. La CouEDH a considéré dans le cadre d'affaires de ségrégation

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<sup>50</sup> Loi sur la protection contre la discrimination, disposition additionnelle sous 1.6.

des Roms qu'un renoncement au droit à la non-discrimination n'est pas possible dans ce contexte car la démarche irait à l'encontre d'un intérêt public majeur.<sup>51</sup>

La loi sur la protection contre la discrimination définit la discrimination indirecte d'une manière qui induit les juges et la commission pour la protection contre la discrimination en erreur et les conduit à l'assimiler à une discrimination directe (déguisée). Les termes «en raison de l'un des motifs» utilisés dans la définition contredisent la partie «apparemment neutre» du libellé. Plusieurs décisions émanant de tribunaux et de la commission pour la protection contre la discrimination ont interprété l'expression «en raison de l'un des motifs» comme établissant un lien de causalité entre la règle apparemment neutre et le(s) motif(s) protégé(s) en cause – une interprétation qui semble se baser sur une hypothèse selon laquelle un acte «apparemment neutre» est un acte qui se fonde effectivement sur un motif protégé mais de façon cachée, et non ouverte; les juges et la commission estiment donc que la disposition relative à la discrimination indirecte désigne une discrimination directe dissimulée.<sup>52</sup> Le concept de discrimination indirecte est, de façon générale, mal compris des juges et de la commission pour la protection contre la discrimination.

Des interdictions de discrimination abstraites figurant dans des lois préexistantes régissant des domaines spécifiques ainsi que dans la Constitution restent en vigueur parallèlement à la loi sur la protection contre la discrimination. On constate une absence totale de cohérence entre cette dernière et ces interdictions plus anciennes avec des disparités en termes de motifs protégés, d'exceptions et de définitions. Cette incohérence entre la loi sur la protection contre la discrimination et d'autres lois régissant des domaines particuliers se traduit par l'existence de dispositions directement ou indirectement discriminatoires incompatibles avec l'interdiction universelle établie par la première. Aucun effort ou presque n'a été déployé pour harmoniser la législation de façon à garantir que la loi sur la protection contre la discrimination prévale sur toute autre disposition discriminatoire divergente.

En 2014, la Cour suprême administrative a établi des exigences restrictives en rapport avec l'application de la loi sur la protection contre la discrimination, lesquelles vont à l'encontre de ladite loi et du droit de l'UE.<sup>53</sup>

La Cour suprême administrative a considéré qu'il fallait, pour qu'il y ait discrimination, que la différence de traitement se fonde *exclusivement* sur un motif protégé, à l'exclusion de cas de «motifs divers», à savoir des situations dans lesquelles une caractéristique protégée constitue une raison parmi d'autres du traitement moins favorable.<sup>54</sup> La Cour suprême administrative manque cependant de cohérence dans la mesure où elle a dit pour droit dans une affaire récente qu'il y a traitement discriminatoire indépendamment du fait qu'un motif protégé soit la raison unique d'un traitement moins favorable ou qu'il en soit une raison parmi d'autres.<sup>55</sup> Comme déjà signalé, la Cour suprême administrative a recouru dans des cas de traitement moins favorable, autrement dit des cas de discrimination directe, à une justification uniquement applicable à la discrimination indirecte. Elle a appliqué le concept de discrimination indirecte à une série de cas de traitement défavorable direct: en 2014, elle a considéré par exemple, dans le cadre d'une affaire où un détenu musulman se plaignait que son régime alimentaire comprenait de la viande de porc (refus

<sup>51</sup> Par exemple, *D.H. contre République tchèque*, arrêt du 13 novembre 2007; *Sampanis contre Grèce*, arrêt du 5 juin 2008; *Orsus c. Croatie*, arrêt du 16 mars 2010 (GC).

<sup>52</sup> Par exemple: tribunal de district de Radnevo, décision n° 97 du 13 décembre 2004, affaire n° 365/2004; tribunal régional de Sofia, décision du 12 juillet 2004, affaire n° 1184/2004; tribunal de district de Sofia, décision du 19 août 2004, affaire n° 1262/2004; tribunal de district de Sofia, décision du 19 décembre 2006, affaire n° 2756/2006. Décisions de la Cour suprême administrative: décision n° 11421 du 19 novembre 2007, affaire n° 5604/2007; décision n° 12117 du 3 décembre 2007, affaire n° 8044/2007; décision n° 4752 du 15 mai 2007, affaire n° 11478/2006; décision n° 11295 du 16 novembre 2007, affaire n° 6407/2007; décision n° 13393 du 28 décembre 2007, affaire n° 8083/2007; décision n° 7811 du 19 juillet 2007, affaire n° 1048/2007.

<sup>53</sup> Voir p. 14 ci-dessus.

<sup>54</sup> Cour suprême administrative, décision n° 8277 du 11 juin 2012 dans l'affaire n° 3852/2012 notamment.

<sup>55</sup> Cour suprême administrative, décision n° 274 du 9 janvier 2012 dans l'affaire n° 1319/2011.

d'aménagement raisonnable), qu'il s'agissait d'une discrimination indirecte envers le plaignant par rapport aux détenus musulmans d'une autre prison dont le régime alimentaire était adapté.<sup>56</sup>

La Cour suprême administrative a fait preuve dans quelques affaires d'une grave méconnaissance du concept de comparateur, considérant que les exigences relatives à l'âge en matière d'accès à l'emploi ne sont pas constitutives de discrimination du fait qu'elles s'appliquent à tous les candidats, et pas uniquement à la partie plaignante.<sup>57</sup> Elle a requis une intention, établissant souvent de manière expresse que le traitement doit être commis *consciemment* sur la base de l'un des motifs protégés.<sup>58</sup> Comme déjà indiqué, la Cour suprême administrative a estimé à deux reprises en 2014 que seul un comportement «coupable» peut être considéré comme une infraction en vertu de la loi sur la protection contre la discrimination.<sup>59</sup> Sa jurisprudence n'en est pas moins contradictoire: en 2014 également, elle a déclaré dans une affaire que la discrimination directe ne requiert pas d'intention discriminatoire et que, par conséquent, l'absence d'intention est non pertinente pour considérer qu'un traitement est discriminatoire, y compris lorsque son auteur pense qu'il est légitime.<sup>60</sup> Dans une affaire traitée en 2014, la Cour suprême administrative a interprété que, pour constituer un motif protégé, «l'orientation sexuelle» devait être innée, et non «consciemment» choisie: elle a refusé le droit d'asile à un homosexuel camerounais parce qu'il avait «décidé» à l'âge de 35 ans de «choisir» une sexualité qui n'était pas sa sexualité «innée».<sup>61</sup>

La commission pour la protection contre la discrimination n'utilise pas ses compétences, et notamment celle lui permettant d'engager des poursuites d'office, de manière stratégique. Elle ne s'est fixé aucune priorité. Elle n'a ciblé aucune des grandes problématiques relevant d'une discrimination, telles que la ségrégation des Roms dans l'enseignement, leur indigence et leur isolement en termes de logement, le placement en institutions des personnes handicapées, etc. Elle refuse en règle générale d'examiner (en termes de recevabilité) ou d'accueillir (en termes de bien-fondé) des plaintes pour discrimination déposées par des personnes handicapées qui n'ont pas présenté d'attestation médicale de leur handicap.<sup>62</sup> Comme la Cour suprême administrative, la commission pour la protection contre la discrimination manifeste souvent une méconnaissance du concept de discrimination indirecte, qu'elle assimile parfois à une discrimination directe.

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<sup>56</sup> Cour suprême administrative, décision n° 2514 du 21 février 2014, affaire n° 10989/2013.

<sup>57</sup> Cour suprême administrative, décision n° 7096 du 19 mai 2012 dans l'affaire n° 3686/2012; décision n° 10734 du 1<sup>er</sup> septembre 2014 dans l'affaire n° 1463/2014.

<sup>58</sup> Cour suprême administrative, décision n° 8277 du 11 juin 2012 dans l'affaire 3852/2012; décision n° 3645 du 14 mars 2014 dans l'affaire n° 12679/2013 (exigence d'une perpétration «consciente», réitérée à deux reprises) notamment.

<sup>59</sup> Cour suprême administrative, décision n° 5645 dans l'affaire n° 15991/2013, décision n° 15637 dans l'affaire n° 1925/2014.

<sup>60</sup> Cour suprême administrative, décision n° 1048 du 27 janvier 2014 dans l'affaire n° 8033/2013. L'affaire concernait l'application d'une limite d'âge dans le cadre du règlement d'une université.

<sup>61</sup> Cour suprême administrative, décision n° 9467 du 7 juillet 2014 dans l'affaire n° 1381/2014.

<sup>62</sup> Commission pour la protection contre la discrimination, décision n° 259 du 17 décembre 2008 dans l'affaire n° 186/2008, notamment.

## ZUSAMMENFASSUNG

### 1. Einleitung

Zu den besonders benachteiligten Gruppen in Bulgarien gehören die Roma, Flüchtlinge bzw. Migranten, Muslime, Juden, Angehörige nicht-orthodoxer Religionsgemeinschaften, Mazedonier, Türken, Menschen mit Behinderungen, insbesondere geistigen Behinderungen, und LGBT-Personen. Der derzeitigen Regierungskoalition gehören zwei Parteien an, die von der Europäischen Kommission gegen Rassismus und Intoleranz als „ultranationalistisch/faschistisch“ eingestuft werden: die „Nationale Front für die Rettung Bulgariens“ und „VMRO-BND“.<sup>63 64</sup> Diskriminierung und Hass, insbesondere Hassreden und Hassverbrechen, gegen Roma sind allgegenwärtig, radikal und praktisch straflos. Hohe Beamte rufen offen zu Hass und Diskriminierung gegenüber den Roma auf und stellen diese als Untermenschen dar. Die Staatsanwaltschaft und die Gleichbehandlungsstelle, die gesetzlich für die Verfolgung von Hassrede zuständig sind, verfolgen derartige Fälle nicht.

Die Roma leben in getrennten Wohnvierteln unter elenden Bedingungen und werden häufig Opfer von Zwangsräumungen. Der Europäische Gerichtshof für Menschenrechte (EGMR) hat Bulgarien in einem derartigen Fall zur Zahlung von Schadensersatz verurteilt.<sup>65</sup> Roma leiden unter Langzeitarbeitslosigkeit und haben keinen Zugang zur beruflichen Bildung und zum Arbeitsmarkt. Auch beim Zugang zum Gesundheitswesen und anderen Dienstleistungen werden sie diskriminiert und belästigt. Ihre Kinder werden in segregierten minderwertigen Schulen oder auch überhaupt nicht unterrichtet. Das Strafrechtssystem verfolgt sie überproportional stark und verweigert ihnen einen gleichberechtigten Rechtsschutz, z. B. vor Hassverbrechen durch Beamte und Bürger. Sie sind nirgends repräsentiert und haben auf keiner politischen Ebene Zugang zu Entscheidungsprozessen.

Hassreden und Hassverbrechen gegen Flüchtlinge bzw. Migranten, auch Hassreden von Beamten, nehmen in letzter Zeit stark zu. Diese Gewalt bleibt straflos. Der EGMR hat Bulgarien in einem derartigen Fall verurteilt.<sup>66</sup> 2016 wurden Selbstschutzgruppen aktiv, die mit hassmotivierten rechtswidrigen Festnahmen, Beleidigungen, Nötigungen, körperlicher Gewalt und anderen nach bulgarischem Recht als Straftaten geltenden Handlungen gegen Ausländer im Grenzgebiet vorgehen. Die Täter erhielten von den Massenmedien des Landes eine positive Berichterstattung und ein Forum, um von hier aus zu Hass und organisierten Hassverbrechen gegen Geflüchtete und Migranten aufzurufen. Der frühere Ministerpräsident Borisov erklärte öffentlich, er danke den Tätern für die Hilfe, die sie dem Staat anböten, und stellte fest, dass jegliche Hilfe willkommen sei.<sup>67</sup> Lediglich ein Selbstschutz-Aktivist wurde seitens der Staatsanwaltschaft strafrechtlich verfolgt, jedoch erfolglos. Viele Asylsuchende leben unter unwürdigen Bedingungen. Der Hass gegen Juden, Muslime, nicht-orthodoxe Religionsgemeinschaften und Türken kommt unter anderem in der Schändung von Tempeln und in gewalttätigen Demonstrationen zum Ausdruck. Der EGMR hat Bulgarien auch in einem derartigen Fall verurteilt.<sup>68</sup> Die nationale Identität von Mazedoniern wird nicht anerkannt (sie gelten als Bulgaren) und Gerichte lehnen es ab, mazedonische Organisationen als Vereine einzutragen. Örtliche Behörden stören ihre friedlichen Zusammenkünfte. Der EGMR hat Bulgarien in mehreren derartigen

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<sup>63</sup> Innere Mazedonische Revolutionäre Organisation – Bulgarische Nationalbewegung.

<sup>64</sup> ECRI, Länderbericht Bulgarien vom 16. September 2014.

<sup>65</sup> *Jordanova and Others v. Bulgaria*, Urteil vom 24. April 2012. Beschwerde Nr. 25446/06.

<sup>66</sup> *Abdu v. Bulgaria*, Urteil vom 11. März 2014. Beschwerde Nr. 26827/08.

<sup>67</sup> Siehe Nachrichtenberichte unter: <http://btvnovinite.bg/article/vodeshti-novini/bhk-sas-signal-sreshtu-premiera-bojko-borisov-zaradi-blagodarnostite-kam-dobrovolcheskite-otrjadi.html>; [http://www.dnevnik.bg/bulgaria/2016/04/10/2739769\\_borisov\\_dva\\_koraba\\_za\\_800 mln\\_lv\\_shte\\_budat\\_p\\_ostroeni/](http://www.dnevnik.bg/bulgaria/2016/04/10/2739769_borisov_dva_koraba_za_800 mln_lv_shte_budat_p_ostroeni/); [https://offnews.bg/news/Obshtestvo\\_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d\\_627393.html](https://offnews.bg/news/Obshtestvo_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d_627393.html).

<sup>68</sup> *Karaahmed v. Bulgaria*, Urteil vom 24. Februar 2015. Beschwerde Nr. 30587/13.



Fällen verurteilt.<sup>69</sup> Bulgarien hat diese Urteile nicht umgesetzt und steht aus diesem Grund unter der verschärften Beobachtung des Ministerkomitees des Europarates.

Menschenrechtsverteidiger wurden wegen ihrer Aktivitäten zur Unterstützung von Geflüchteten/Migranten und anderen besonders marginalisierten Minderheiten, einschließlich der Roma und der LGBT-Gemeinschaft, Ziel verbaler und körperlicher Gewalt.<sup>70</sup> Eine Menschenrechtsanwältin, damals Chefjuristin einer Menschenrechts-NRO, wurde von der Polizei im Rahmen einer strafrechtlichen Ermittlung zu öffentlichen Äußerungen befragt, die sie gemacht hatte, als sie einen Prozess wegen romafeindlicher Hassreden gegen den derzeitigen stellvertretenden Ministerpräsidenten Valery Simeonov gewonnen hatte. Das Strafverfahren ist nach wie vor anhängig.

Menschen mit Behinderung werden in den Bereichen Bildung und Beschäftigung, beim Zugang zu Dienstleistungen und bei der politischen Partizipation ausgegrenzt und benachteiligt. Viele Kinder mit Behinderungen können keine Schule besuchen, weil keine Barrierefreiheit gegeben ist. Die meisten sind in minderwertigen Förderschulen segregiert. Viele Erwachsene und Kinder werden in segregierten Institutionen betreut, wo sie einer menschenunwürdigen Behandlung ausgesetzt sind und früh sterben – nach Ansicht von Menschenrechtsorganisationen aufgrund von Vernachlässigung.<sup>71</sup> Täter genießen Straflosigkeit, die Behörden ermitteln in solchen Fällen nicht. Der EGMR hat Bulgarien in zwei wichtigen Fällen für die Verletzung der Rechte von Menschen mit Behinderungen verurteilt.<sup>72</sup> Die architektonische Umgebung von Dienstleistungsangeboten ist in der Regel unzugänglich. Zahlreiche Unternehmen sind vom Obersten Verwaltungsgericht verurteilt worden, weil sie ihre Einrichtungen nicht zugänglich gemacht haben.<sup>73</sup> LGBT-Personen sind Hassreden, Hassverbrechen und Diskriminierung ausgesetzt.

2014 gab das Oberste Verwaltungsgericht (OVG), die letzte Instanz, die die Entscheidungen der Gleichbehandlungsstelle überprüft, eine neue und restriktive Auslegung des Gleichbehandlungsrechts vor.<sup>74</sup> Nach dem OVG kann die Gleichbehandlungsstelle nicht jeden Verstoß gegen das Gleichbehandlungsrecht ahnden, sondern nur solche Verstöße, die Ordnungswidrigkeiten nach dem Gesetz über Ordnungswidrigkeiten und Ordnungsstrafen darstellen. Dazu muss eine konkrete Handlung bzw. Unterlassung, ein konkreter Täter, ein konkretes Opfer und die Schuld des Täters nachgewiesen werden. Diskriminierung muss eine konkrete Tatsache sein, keine hypothetische Möglichkeit.<sup>75</sup> Diskriminierungen können nur von natürlichen Personen begangen werden. Juristische Personen können in gesetzlich geregelten Ausnahmefällen ebenfalls Diskriminierungen begehen. Öffentliche Behörden können nicht diskriminieren – nur einzelne Mitarbeiter, die im Namen der Behörde handeln. Rechtliche Bestimmungen sind keine konkreten Handlungen bzw. Unterlassungen und können damit auch keine Diskriminierung darstellen. Auch die Anwendung einer rechtlichen Bestimmung ist keine

<sup>69</sup> Unter anderem: *United Macedonian Organisation Ilinden and Others v. Bulgaria* (Nr. 2), Urteil vom 18. Oktober 2011. Beschwerde Nr. 34960/04.

<sup>70</sup> Siehe Nachrichtenberichte unter: <http://btvnovinite.bg/article/kriminalno/neizvestni-napadnaha-predsdatelja-na-bhk-nasred-sofija.html>; <http://clubz.bg/46257-napadnaha-i-biha-shefa-na-bylgarskiq-helzinski-komitet>; <http://www.bghelsinki.org/bg/novini/press/single/bhk-osyzhda-bezdejstvieto-na-instituciite-pri-poredna-proyava-na-tormoz-i-presledvane-na-organizaciyata/>.

<sup>71</sup> Siehe z. B. die Beschwerde, die das bulgarische Helsinki-Komitee im Namen von zwei der verstorbenen Kinder beim Europäischen Gerichtshof für Menschenrechte gegen Bulgarien eingereicht hat: [http://hudoc.echr.coe.int/eng#{"appno":\["35653/12"\],"itemid":\["001-156281"\]}](http://hudoc.echr.coe.int/eng#{).

<sup>72</sup> *Stanev v. Bulgaria*, Urteil vom 17. Januar 2012, *Stefan Stankov v. Bulgaria*, Urteil vom 17. März 2015.

<sup>73</sup> Siehe u.a.: Oberstes Verwaltungsgericht, Entscheidung Nr. 158 vom 8. Januar 2015 in der Rechtssache 7092/2014; Entscheidung Nr. 5748 vom 16. Mai 2016 in der Rechtssache Nr. 5495/2015; Entscheidung Nr. 4922 vom 26. April 2016 in der Rechtssache Nr. 11652/2015; Entscheidung Nr. 6956 vom 9. Juni 2016 in der Rechtssache Nr. 6376/2015; Entscheidung Nr. 9030 vom 19. Juli 2016 in der Rechtssache Nr. 4992/2015; Entscheidung Nr. 17 vom 4. Januar 2016 in der Rechtssache Nr. 1076/2015.

<sup>74</sup> Oberstes Verwaltungsgericht, Urteil Nr. 5645 in der Rechtssache 15991/2013 und Urteil Nr. 15637 in der Rechtssache 1925/2014. Dieses Problem wird in Abschnitt 11.1 und 12.2 dieses Berichts näher behandelt.

<sup>75</sup> Oberstes Verwaltungsgericht, Urteil Nr. 15637 vom 19.12.2014 in der Rechtssache 1925/2014. Der Fall betraf die Anwendung einer Altersgrenze nach Sekundärrecht.

konkrete Handlung bzw. Unterlassung. Die Gleichbehandlungsstelle kann Gesetze nicht für diskriminierend erklären: ein Gesetz, das vom Verfassungsgericht (VG) nicht für verfassungswidrig erklärt wurde, kann nicht diskriminierend sein. Die Gleichbehandlungsstelle kann Sekundärrecht nicht für diskriminierend erklären: Sekundärrecht, das vom Obersten Verwaltungsgericht (OVG) nicht für rechtswidrig erklärt wurde, kann nicht diskriminierend sein. Wenn die Gleichbehandlungsstelle der Ansicht ist, dass eine Rechtsnorm gegen das Gleichbehandlungsrecht verstößt, kann sie dennoch keinen Verstoß gegen das Gleichbehandlungsrecht geltend machen. Sie kann die zuständige Stelle nicht zur Aufhebung oder Änderung der Norm verpflichten. Sie kann nur eine Empfehlung aussprechen oder vor dem OVG gegen das betreffende Sekundärrecht klagen.

2015 prüften das OVG und der Oberste Kassationshof in dem Auslegungsverfahren Nr. 2/2014 vor einem gemischten Senat aus Mitgliedern beider Gerichtshöfe die Frage, welches der beiden Gerichte für Diskriminierungsklagen natürlicher Personen gegen staatliche Behörden zuständig ist.<sup>76</sup> Das Fallrecht ist seit 2007 widersprüchlich. Die Gerichte kamen zu dem Ergebnis, dass nicht die Zivil-, sondern die Verwaltungsgerichte zuständig seien. 2017 entschied das Oberste Verwaltungsgericht jedoch in mindestens drei Fällen, dass für Entscheidungen über Entschädigungsansprüche nicht die Verwaltungs-, sondern die Zivilgerichte zuständig sind, wenn vor Einreichung der Klage kein Verfahren vor einer Gleichbehandlungsstelle stattgefunden hat.<sup>77</sup> Die Rechtslage ist nach wie vor unklar und unvorhersehbar.

2015 entschied der EuGH im Wege einer Vorabentscheidung über einen Fall, in dem es um die Unzugänglichkeit von Stromzählern in überwiegend von Roma bewohnten Stadtteilen ging. Das Dienstleistungsunternehmen hatte die Stromzähler in einer unzugänglichen Höhe angebracht, um angeblichen Stromdiebstahl und eine Beschädigung der Apparate zu verhindern. Der EuGH erklärte die Maßnahme für diskriminierend, da die Stromzähler in anderen, nicht von Roma bewohnten Stadtteilen so angebracht seien, dass sie für die Verbraucher zugänglich seien, um sie zu prüfen.<sup>78</sup>

## 2. Wichtigste Rechtsvorschriften

Das Gesetz zum Schutz gegen Diskriminierung (GSD) von 2004 ist das wichtigste Antidiskriminierungsgesetz und wurde zur Umsetzung der Richtlinien verabschiedet.<sup>79</sup> Es ist ein allgemeines Gleichbehandlungsgesetz, das Diskriminierung aus zahlreichen Gründen, einschließlich „Rasse“ und ethnische Zugehörigkeit, Geschlecht, Religion und Weltanschauung, sexuelle Ausrichtung, Behinderung und Alter, verbietet und einheitliche Schutzstandards und Rechtsmittel bereitstellt. Das GSD als Ganzes entspricht den Richtlinien und geht in wichtigen Aspekten über deren Vorgaben hinaus: allgemeiner Geltungsbereich, erweiterte und nicht abgeschlossene Liste von Diskriminierungsgründen, zusätzliche Formen von Diskriminierung, erweiterte Zuständigkeit der Gleichbehandlungsstelle und spezielle Rechtsbehelfe. Diskriminierungsopfer machen das GSD aktiv vor der Gleichbehandlungsstelle und den Gerichten geltend und es gibt bereits einschlägiges Fallrecht, das ständig zunimmt.

Ein weiteres Gleichbehandlungsgesetz ist das Gesetz zur Integration von Menschen mit Behinderungen (MBIG),<sup>80</sup> das in vielen Bereichen positive Maßnahmen und die Pflicht zu angemessenen Vorkehrungen einführt. Andere Gesetze für bestimmte Lebensbereiche, wie

<sup>76</sup> Verfügung (*Разпореждане*) vom 27.06.2014, abrufbar unter [http://www.vks.bg/Dela/2014-02-BKC\\_BAC%20Разпореждане%20за%20образуване.pdf](http://www.vks.bg/Dela/2014-02-BKC_BAC%20Разпореждане%20за%20образуване.pdf) (in bulgarischer Sprache).

<sup>77</sup> Oberstes Verwaltungsgericht, Entscheidung Nr. 8753 vom 5. Juli 2017 in der Rechtssache Nr. 8115/2016, Entscheidung Nr. 8583 vom 4. Juli 2017 in der Rechtssache Nr. 7679/2015, Beschluss (*Определение*) Nr. 9034 vom 11. Juli 2017 in der Rechtssache Nr. 6859/2017.

<sup>78</sup> Urteil vom 16. Juli 2015 in der Rechtssache C-83/14.

<sup>79</sup> *Закон за защита от дискриминация*, verabschiedet im September 2003, in Kraft seit Januar 2004.

<sup>80</sup> *Закон за интеграция на хората с увреждания*, verabschiedet im September 2004, in Kraft seit Januar 2005.

Bildung, Beschäftigung oder öffentliche Beschaffung, sehen positive Maßnahmen aufgrund von Behinderung, Alter und Betreuungsverpflichtungen vor.

In Einzelgesetzen und in der Verfassung findet sich ebenfalls ein abstraktes Diskriminierungsverbot, dieses wird aber nicht umgesetzt. Bulgarien hat sich zur Einhaltung internationaler Rechtsinstrumente verpflichtet, die Diskriminierung verbieten, dazu gehören die Europäische Menschenrechtskonvention (EMRK), die Europäische Sozialcharta (revidiert), der Internationale Pakt über bürgerliche und politische Rechte, der Internationale Pakt über wirtschaftliche, soziale und kulturelle Rechte, das Übereinkommen zur Beseitigung jeder Form von Diskriminierung der Frau, das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung und das Übereinkommen über die Rechte des Kindes. Die Verfassung und verbindliches internationales Recht sind von bulgarischen Gerichten direkt anwendbar und haben dabei Vorrang vor abweichenden Rechtsvorschriften. Sie können gegen privatrechtliche Personen und gegen öffentliche Stellen geltend gemacht werden.

### **3. Wichtigste Grundsätze und Begriffe**

Das GSD schützt vor und definiert unmittelbare und mittelbare Diskriminierung, einschließlich von Diskriminierung durch Assoziierung und aufgrund mutmaßlicher Eigenschaften. Das GSD definiert unmittelbare Diskriminierung als Situation, in der eine Person wegen eines geschützten Diskriminierungsgrundes eine weniger günstige Behandlung erfährt als eine andere Person in vergleichbaren Umständen erfährt, erfahren hat oder erfahren würde. Das GSD definiert „wegen“ als tatsächlicher, in der Gegenwart oder Vergangenheit, oder mutmaßlicher Besitz eines oder mehrerer geschützter Diskriminierungsgründe durch die diskriminierte Person selbst oder eine andere Person, die, tatsächlich oder mutmaßlich, mit der diskriminierten Person assoziiert ist, wobei die Assoziierung der Grund für die Diskriminierung darstellt. Das GSD enthält keine allgemeinen Ausnahmen für unmittelbare Diskriminierung.

Das Gesetz enthält beispielhafte Verbote bestimmter diskriminierender Verhaltensweisen in den Bereichen Beschäftigung und Bildung und bei der Bereitstellung von Dienstleistungen. Außerdem enthält es eine geschlossene Liste spezieller Ausnahmen für alle geschützten Gründe, zum Beispiel für wesentliche und entscheidende berufliche Anforderungen, für Arbeitgeber mit einem religiösen Ethos und für Höchst- und Mindestalter beim Zugang zu Beschäftigung und Bildung, die jedoch objektiv gerechtfertigt sein müssen. Es erlaubt die Ungleichbehandlung von Nicht-Staatsbürgern, wenn diese durch andere Rechtsvorschriften geregelt ist, und nicht gerechtfertigte Alters- und Dienstaltersgrenzen bei Rentenregelungen. Positive Maßnahmen zugunsten benachteiligter Gruppen sind zulässig.

Nach dem GSD liegt eine mittelbare Diskriminierung vor, wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren Personen wegen eines geschützten Grundes gegenüber anderen Personen benachteiligen können, es sei denn diese Vorschriften, Kriterien oder Verfahren sind durch ein rechtmäßiges Ziel sachlich gerechtfertigt und die Mittel sind zur Erreichung dieses Ziels angemessen und erforderlich.

Das GSD stellt ausdrücklich fest, dass Belästigung, Anstiftung zur Diskriminierung und Viktimisierung Formen von Diskriminierung sind. Es definiert Belästigung als unerwünschte Verhaltensweisen, die mit einem der geschützten Gründe in Zusammenhang stehen, sich körperlich, verbal oder in anderer Weise äußern und bezwecken oder bewirken, dass die Würde der betreffenden Person verletzt und ein von Anfeindungen, Beleidigungen oder Einschüchterungen gekennzeichnetes Umfeld geschaffen wird. Der Schutz gilt auch für Belästigung aufgrund von mutmaßlicher Eigenschaften oder Assoziierung. Anstiftung zur Diskriminierung ist definiert als unmittelbare und absichtliche Ermutigung von Diskriminierung, was auch die Anweisung zur Diskriminierung umfasst. Viktimisierung ist wie folgt definiert: a) weniger günstige Behandlung einer Person, die, tatsächlich oder

mutmaßlich, Maßnahmen gegen Diskriminierung getroffen hat oder treffen wird, b) weniger günstige Behandlung einer Person wegen einer mit ihr assoziierten Person, die, tatsächlich oder mutmaßlich, Maßnahmen gegen Diskriminierung getroffen hat oder treffen wird, c) weniger günstige Behandlung einer Person wegen der Weigerung, eine Anweisung zur Diskriminierung auszuführen. Maßnahmen zum Schutz vor Diskriminierung sind unter anderem die Einleitung eines Verfahrens vor der Gleichbehandlungsstelle oder einem Gericht und eine Zeugenaussage.

Diese Definitionen gelten für alle Diskriminierungsgründe. Mehrfachdiskriminierung ist definiert als Diskriminierung wegen mehr als einem der geschützten Diskriminierungsgründe. Das GSD verpflichtet öffentliche Stellen, Opfer von Mehrfachdiskriminierung durch positive Maßnahmen vorrangig zu unterstützen. Gemäß dem GSD behandelt die Gleichbehandlungsstelle Fälle von Mehrfachdiskriminierung in Senaten mit fünf Mitgliedern, anstelle des üblichen Senats mit drei Mitgliedern. In der Rechtsprechung wurde das Thema Mehrfachdiskriminierung jedoch bisher nicht angemessen behandelt.

Das GSD definiert Rassentrennung und verbietet sie als Form von Diskriminierung. Es schreibt angemessene Vorkehrungen für Menschen mit Behinderungen in Beschäftigung und Bildung vor. Diese Pflicht endet, wenn „die Kosten unangemessen hoch sind und eine schwere Belastung für den Arbeitgeber oder Bildungsträger darstellen“. Gemäß dem MBIG ist der Bildungsminister verpflichtet, Kindern mit Behinderungen ein günstiges Umfeld für integriertes Lernen bereitzustellen. Dies ist eine absolute Pflicht. Nach dem MBIG hat der Minister die Pflicht, auch nicht integrierten Kindern mit Behinderung eine Bildungsmöglichkeit zu bieten. Auch diese Pflicht ist absolut. Höhere Bildungseinrichtungen haben ebenfalls die absolute Pflicht, angemessene Vorkehrungen zu treffen.

Nach dem GSD sind Behörden, Arbeitgeber und Bildungsträger verpflichtet, die Gleichbehandlung in allen Bereichen zu berücksichtigen und für alle Diskriminierungsgründe positive Maßnahmen zu treffen. Eine Haftung ist vorgesehen für Mittäter diskriminierender Handlungen und eine Mithaftung für Arbeitgeber und Bildungsträger, die Diskriminierung am Arbeitsplatz bzw. im Bildungsinstitut durch Dritte nicht verhindern. Auch eine Umkehrung der Beweislast ist vorgesehen. 2015 wurde die Vorschrift zur Beweislastverlagerung geändert, um deutlicher zu machen, dass eine diskriminierte Person keinen eindeutigen Beweis für ihre Benachteiligung vorlegen, sondern diese nur glaubhaft machen muss. Die Vorschrift (Art. 9 GSD) lautet nun wie folgt (Hervorhebungen hinzugefügt):: „Wenn in einem Verfahren zum Schutz vor Diskriminierung die Partei, die behauptet, diskriminiert worden zu sein, Fakten *anführt (vorlegt)*, aus denen *gefolgert* werden kann, dass eine Diskriminierung vorliegt, muss die beklagte Partei beweisen, dass nicht gegen den Grundsatz der Gleichbehandlung verstoßen wurde.“ Die frühere Fassung lautete: „Wenn in einem Verfahren zum Schutz vor Diskriminierung die Partei, die behauptet, diskriminiert worden zu sein, Fakten *belegt*, aus denen die *Schlussfolgerung* gezogen werden kann, dass eine Diskriminierung vorliegt, muss die beklagte Partei beweisen, dass nicht gegen den Grundsatz der Gleichbehandlung verstoßen wurde.“

#### **4. Sachlicher Anwendungsbereich**

Das GSD hat einen unbegrenzten Anwendungsbereich. Es gilt für alle Lebensbereiche, einschließlich der von den Richtlinien abgedeckten Bereiche. Dieses generelle Diskriminierungsverbot gilt für alle Diskriminierungsgründe und sowohl für den privaten als auch für den öffentlichen Sektor.

#### **5. Rechtsdurchsetzung**

Das GSD bietet zwei Möglichkeiten: Klage vor einem ordentlichen Gericht und ein spezielles außergerichtliches Verfahren vor der Gleichbehandlungsstelle. Die Wahl liegt beim Opfer.

Gerichte können eine Diskriminierung feststellen, Schadensersatz zusprechen und den Täter zu Ausgleichsmaßnahmen oder zur Beendigung der betreffenden Handlung bzw. Unterlassung verurteilen. Die Kommission zum Schutz gegen Diskriminierung (SGDK) kann ebenfalls eine Diskriminierung feststellen und Präventions- bzw. Abhilfemaßnahmen anordnen. Sie kann finanzielle Sanktionen verhängen, jedoch keinen Schadensersatz zusprechen. Beide Verfahren sind uneingeschränkt für den öffentlichen und den privaten Sektor anwendbar. Sie sind rechtsverbindlich. In beiden gilt der Grundsatz der umgekehrten Beweislast. Beide Verfahren werden in der Praxis genutzt. Beide sind gesetzlich von Gebühren und sonstigen Kosten befreit, wobei die Gerichte diese Bestimmung in der Praxis nicht umsetzen und die Zahlung von Gebühren anordnen.

Es gab nur sehr wenige Fälle, in denen der Beklagte nur aus dem Grund wegen Diskriminierung verurteilt wurde, weil er nicht beweisen konnte, dass eine mutmaßliche Diskriminierung nicht vorgelegen hat. Allerdings berücksichtigen die Gerichte die spezielle Regel zur Beweislast und gründen teilweise ihre Urteile auf dieser Regel. Der Unterschied zwischen unmittelbarer und mittelbarer Diskriminierung wird jedoch nicht immer verstanden, wodurch unmittelbare Diskriminierung in manchen Fällen als gerechtfertigte mittelbare Diskriminierung ausgelegt wird.

Gemäß dem GSD muss die SGDK Opfer von Diskriminierung unterstützen. In der Praxis erhalten Kläger rechtliche Ratschläge zur Einreichung von Klagen vor Gericht. Die SGDK kann Verfahren einleiten und sich an laufenden Verfahren beteiligen. Diese Möglichkeiten hat die Kommission jedoch noch nie genutzt. Dagegen reichen NROs aktiv Klage gegen Diskriminierungsfälle ein. Sie sind berechtigt, Kläger vor Gericht zu vertreten und sich zur Unterstützung des Klägers am Verfahren zu beteiligen. NROs sind außerdem berechtigt, in eigenem Namen Klagen im öffentlichen Interesse einzureichen, wenn die Rechte vieler Menschen verletzt wurden. Dazu benötigen sie nicht die Einwilligung eines konkreten Opfers. Auch Beschwerde bei der SGDK können sie ohne Nennung eines konkreten Opfers einlegen. NROs haben zahlreiche Klagen im öffentlichen Interesse geführt. Dies hat das Thema in den Fokus der Öffentlichkeit gerückt. Inzwischen sind mehrere klare Urteile ergangen, die das Potenzial haben, einen gewissen gesellschaftlichen Wandel anzustoßen. Auch die Medien berichten über Diskriminierungsklagen, insbesondere Klagen von NROs. Zum Nachweis von Diskriminierung haben NROs auch Situationstests genutzt und vor Gericht als gültige Beweismittel eingeführt. In einigen Fällen haben sie auch statistische Daten vorgelegt. Nach der Zivilprozessordnung liegt es im Ermessen des Richters, statistische Daten und Situationstests als Beweise zuzulassen. Die Zulässigkeit dieser Formen der Beweisführung wurde bisher nicht diskutiert. Die im Situationstest gewonnenen Erkenntnisse wurden als übliche Zeugenaussagen zugelassen, ohne dass die gemeinnützigen Ziele von Situationstests thematisiert worden wären. Auch statistische Daten werden von der Gleichbehandlungsstelle und Richtern als reguläre Beweise akzeptiert. Die SGDK hat aus eigenem Antrieb statistische Daten erhoben.

Zu den Sanktionsmöglichkeiten der SGDK bei Diskriminierungsfällen gehören Geldbußen (maximal 1250 Euro) und verbindliche Verpflichtungen der Beklagten zu bestimmten Präventions- oder Abhilfemaßnahmen. Die SGDK nutzt ihre Sanktionsmöglichkeiten voll aus, wobei die verhängten Geldbußen meist in der Nähe des Höchstbetrags liegen. Zu den angeordneten Maßnahmen gehören unter anderem Wiedereinstellungen und die Änderung von Vorschriften. Allerdings ist nicht klar, wie häufig diese Anordnungen in der Praxis tatsächlich umgesetzt werden, bzw. wie wirksam die Mittel der Kommission zu deren Durchsetzung sind. Sofern die Anordnungen nicht umgesetzt werden, kann die Kommission nur neue Geldbußen verhängen. In Gerichtsverfahren kann ein nach oben offener Schadensersatz zugesprochen werden und der Beklagte kann dazu verurteilt werden, bestimmte Handlungen vorzunehmen oder zu unterlassen. In Ausnahmefällen lagen die Schadensersatzsummen bei bis zu 5000 Euro (fehlende architektonische Barrierefreiheit).

Nach dem Arbeitsrecht gibt es Beschäftigungsquoten für Menschen mit Behinderung und entsprechende Fördermittel für Arbeitgeber. Jüngere und ältere Arbeitnehmer und

Menschen mit Betreuungspflichten genießen im Bereich Beschäftigung eine gewisse Vorzugsbehandlung. Es gibt zahlreiche Förderprogramme in Bereichen wie Bildung und Wohnraum, die nominell die Roma begünstigen, wobei die praktische Wirksamkeit dieser Programme bisher eher gering ist.

Die bulgarischen Behörden haben keine Verfahren für den Dialog mit bzw. die Anhörung von NROs oder Sozialpartnern.

## **6. Gleichbehandlungsstellen**

Die Kommission zum Schutz gegen Diskriminierung (SGDK) ist die spezialisierte nationale Gleichbehandlungsstelle in Bulgarien. Sie wurde durch das GSD als unabhängige außergerichtliche Stelle mit gerichtlichen Befugnissen eingerichtet. Obwohl sie nach dem Gesetz bereits Anfang 2004 ihre Arbeit aufnehmen sollte, war die Kommission erst 2005 voll einsatzbereit. Die SGDK ist für Diskriminierung wegen sämtlicher Diskriminierungsgründe zuständig. Außerdem hat sie die folgenden Aufgaben: Untersuchung der Beschwerden von Opfern und Anzeigen Dritter, Initiierung eigener Untersuchungsverfahren, Feststellung von Diskriminierung in rechtsverbindlichen Entscheidungen, Verhängung von Geldbußen, Anordnung von Abhilfe- oder Präventionsmaßnahmen, Erstellung von Gutachten zu Gesetzesentwürfen, Empfehlung an staatliche Stellen, insbesondere zu Gesetzesänderungen, Unterstützung von Diskriminierungsopfern, Durchführung unabhängiger Studien und Veröffentlichung unabhängiger Berichte. Die SGDK hat eine umfassende Rechtsprechung veröffentlicht, die teilweise bereits Wirkung zeigt. Zum Fallrecht gehören auch die Urteile des Verwaltungsgerichts Sofia und des Obersten Verwaltungsgerichts, bei denen Beschwerde gegen die Entscheidungen der SGDK eingelegt werden kann.

## **7. Zentrale Punkte**

Nach der Definition des GSD liegt nur dann Anstiftung, d. h. auch Anweisung zur Diskriminierung vor, wenn eine unmittelbare Absicht gegeben ist. Die Definition von Rassentrennung nach dem GSD verlangt ausdrücklich, dass die Trennung „erzwungen“ sein muss.<sup>81</sup> Dies unterstellt, dass die Trennung freiwillig erfolgt sein könnte, d. h. dass Menschen auf ihr Recht auf Gleichbehandlung, also auch auf ihr Recht, nicht aufgrund der „Rasse“ segregiert zu werden, verzichten könnten. Der EGMR ist in Bezug auf die Segregation von Roma zu dem Schluss gekommen, dass ein Verzicht auf das Gleichbehandlungsrecht in diesem Zusammenhang nicht möglich ist, weil ein solcher Verzicht wichtige öffentliche Interessen verletzen würde.<sup>82</sup>

Die Definition von mittelbarer Diskriminierung im GSD ist unklar und führt dazu, dass Richter und die SGDK sie mit (verdeckter) unmittelbarer Diskriminierung gleichsetzen. Die Formulierung „wegen eines geschützten Grundes“ widerspricht der Formulierung „dem Anschein nach neutral“. Von einigen Gerichten und der SGDK wird dies in manchen Fällen so ausgelegt, dass „wegen eines geschützten Grundes“ eine kausale Verbindung zwischen der dem Anschein nach neutralen Regel und den geschützten Gründen erfordert. Diese Auslegung beruht auf der Annahme, dass eine „dem Anschein nach neutrale“ Handlung eine Handlung ist, die zwar aufgrund eines geschützten Grundes diskriminiert, dies jedoch nicht offen tut. Daher wird mittelbare Diskriminierung als verdeckte unmittelbare Diskriminierung verstanden.<sup>83</sup> In der Regel haben Richter und die SGDK kein klares Verständnis davon, was mittelbare Diskriminierung ist.

<sup>81</sup> GSD, Zusätzliche Bestimmung, § 1.6.

<sup>82</sup> Z. B. *D.H. v. Czech Republic*, Urteil vom 13.11.2007, *Sampanis v. Greece*, Urteil vom 05.06.2008, *Orsus v. Croatia*, Urteil vom 16.03.2010 (GC).

<sup>83</sup> Z. B.: Bezirksgericht Radnevo, Urteil Nr. 97 vom 13.12.2004, Rechtssache 365/2004; Kreisgericht Sofia, Urteil vom 12.07.2004, Rechtssache 1184/2004; Bezirksgericht Sofia, Urteil vom 19.08.2004, Rechtssache 1262/2004; Bezirksgericht Sofia, Urteil vom 19.12.2006, Rechtssache 2756/2006. Urteile des Obersten Verwaltungsgerichts: Urteil Nr. 11421 vom 19.11.2007, Rechtssache 5604/2007, Urteil Nr. 12117 vom 3.12.2007, Rechtssache 8044/2007, Urteil Nr. 4752 vom 15.05.2007, Rechtssache 11478/2006, Urteil

Parallel zum GSD sind weiterhin ältere abstrakte Diskriminierungsverbote in anderen Einzelgesetzen und in der Verfassung in Kraft. Das GSD wurde nicht mit diesen älteren Diskriminierungsverboten vereinheitlicht, die unterschiedliche Schutzgründe, Ausnahmen und Definitionen enthalten. Die Widersprüche zwischen dem GSD und anderen Einzelgesetzen, die in bestimmten Bereichen unmittelbar und mittelbar diskriminierende Bestimmungen enthalten, schwächen das allgemeine Diskriminierungsverbot des GSD. Es wurden so gut wie keine Anstrengungen unternommen, die Rechtsvorschriften zu harmonisieren und zu gewährleisten, dass das GSD vor abweichenden und diskriminierenden Rechtsvorschriften Vorrang genießt.

Im Jahr 2014 hat das OVG Einschränkungen für die Durchsetzung des GSD eingeführt, die sowohl gegen das GSD selbst als auch gegen europäisches Recht verstoßen.<sup>84</sup>

Nach Ansicht des OVG liegt nur dann eine Diskriminierung vor, wenn die ungleiche Behandlung *ausschließlich* wegen eines geschützten Grundes erfolgt, wodurch Fälle mit „gemischten Motiven“, bei denen ein geschützter Diskriminierungsgrund nur einer der Gründe für eine Ungleichbehandlung ist, nicht als Diskriminierung gelten.<sup>85</sup> Allerdings hält auch das OVG diese Auslegung nicht konsequent durch. In einem aktuellen Fall kam es zu dem Schluss, dass „eine diskriminierende Behandlung nicht davon abhängt, ob ein geschützter Grund der einzige oder einer von mehreren Gründen für eine Benachteiligung ist.“<sup>86</sup> Wie bereits erwähnt, hat das OVG auch bei Fällen unmittelbarer Diskriminierung geprüft, ob die Ungleichbehandlung gerechtfertigt ist, obwohl das GSD eine Ausnahme für gerechtfertigte Ungleichbehandlung nur für Fälle von mittelbarer Diskriminierung erlaubt. Das Gericht hat den Begriff der mittelbaren Diskriminierung auf zahlreiche Fälle angewandt, in denen es um eine unmittelbare weniger günstige Behandlung geht. Beispielsweise kam das OVG 2014 in einem Fall, in dem ein muslimischer Gefangener geklagt hatte, weil seine Mahlzeiten Schweinefleisch enthielten (keine angemessenen Vorkehrungen), zu dem Urteil, dass es sich um eine mittelbare Diskriminierung gegen diesen Kläger im Vergleich zu muslimischen Häftlingen in anderen Haftanstalten handelt, bei denen auf die besonderen Nahrungsvorschriften Rücksicht genommen wurde.<sup>87</sup>

In einigen Fällen bewies das OVG ein mangelndes Verständnis für das Konzept einer Vergleichsperson, indem es argumentiert, dass Altersgrenzen für den Zugang zu Beschäftigung keine Diskriminierung darstellen, weil sie für alle Bewerber gelten und nicht nur für den Kläger.<sup>88</sup> Das OVG macht eine Diskriminierung in manchen Fällen von einem Vorsatz abhängig, indem es ausdrücklich verlangt, dass die „Behandlung *bewusst* aufgrund eines geschützten Grundes erfolgen muss“.<sup>89</sup> Wie bereits erwähnt, kam das OVG im Jahr 2014 zweimal zu dem Schluss, dass nur „schuldhafte“ Handlungen eine Verletzung des GSD darstellen können.<sup>90</sup> Gleichzeitig ist seine Rechtsprechung widersprüchlich: in einem Fall aus dem Jahr 2014 kam das OVG zu der Entscheidung, dass „unmittelbare Diskriminierung keine diskriminierende Absicht erfordert und es daher für die Bewertung der Handlung als Diskriminierung nicht relevant ist, ob eine entsprechende Absicht vorlag oder ob sich der Täter der Rechtswidrigkeit seiner Handlung bewusst war“.<sup>91</sup> In einem Fall von 2014 legte das OVG den Begriff „sexuelle Ausrichtung“ so aus, dass nur eine

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Nr. 11295 vom 16.11.2007, Rechtssache 6407/2007, Urteil Nr. 13393 vom 28.12.2007, Rechtssache 8083/2007, Urteil Nr. 7811 vom 19.07.2007, Rechtssache 1048/2007.

<sup>84</sup> Siehe oben auf Seite 23.

<sup>85</sup> Z. B. Oberstes Verwaltungsgericht, Urteil Nr. 8277 vom 11.06.2012 in der Rechtssache 3852/2012.

<sup>86</sup> Oberstes Verwaltungsgericht, Urteil Nr. 274 vom 9.01.2012 in der Rechtssache 1319/2011.

<sup>87</sup> Oberstes Verwaltungsgericht, Urteil Nr. 2514 vom 21.02.2014 in der Rechtssache 10989/2013.

<sup>88</sup> Oberstes Verwaltungsgericht, Urteil Nr. 7096 vom 19.05.2012 in der Rechtssache 3686/2012; Urteil Nr. 10734 vom 1.09.2014 in der Rechtssache 1463/2014.

<sup>89</sup> Z. B.: Oberstes Verwaltungsgericht, Urteil Nr. 8277 vom 11.06.2012 in der Rechtssache 3852/2012, Urteil Nr. 3645 vom 14.03.2014 in der Rechtssache 12679/2013 (zweimal wird „bewusst“ als Voraussetzung für Diskriminierung erwähnt).

<sup>90</sup> Oberstes Verwaltungsgericht, Urteil Nr. 5645 in der Rechtssache 15991/2013, Urteil Nr. 15637 in der Rechtssache 1925/2014.

<sup>91</sup> Oberstes Verwaltungsgericht, Urteil Nr. 1048 vom 27.01.2014 in der Rechtssache 8033/2013. Der Fall betraf die Anwendung einer Altersgrenze in einer Universitätsordnung.

angeborene sexuelle Orientierung geschützt ist, nicht jedoch eine „absichtlich“ gewählte. Das OVG lehnte den Asylantrag eines homosexuellen Kameruners ab, weil dieser sich mit 35 Jahren für eine andere als seine „angeborene“ Sexualität „entschieden“ habe.<sup>92</sup>

Die SGDK nutzt ihre Befugnisse, insbesondere das Recht zur Einleitung von Untersuchungen *von Amts wegen*, nicht strategisch. Sie setzt sich keine Prioritäten. Der Kommission ist es nicht gelungen, gegen schwere Fälle von Diskriminierung vorzugehen, beispielsweise gegen die Segregation der Roma im Bildungswesen, gegen die Armut und die Ausgrenzung der Roma im Wohnungswesen, gegen die Institutionalisierung von Menschen mit Behinderung usw. Die SGDK lehnt es aus Prinzip ab, Diskriminierungsklagen von Personen anzunehmen (Prüfung der Zulässigkeit) oder zu untersuchen (sachliche Prüfung), die ihre Behinderung nicht durch ein medizinisches Attest nachweisen können.<sup>93</sup> Die SGDK zeigt wie das OVG häufig ein mangelhaftes Verständnis von mittelbarer Diskriminierung und verwechselt diese in manchen Fällen mit unmittelbarer Diskriminierung.

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<sup>92</sup> Oberstes Verwaltungsgericht, Urteil Nr. 9467 vom 7.07.2014 in der Rechtssache 1381/2014.

<sup>93</sup> Z.B.: SGDK, Beschluss Nr. 259 vom 17.12.2008 in dem Verfahren Nr. 186/2008.



## INTRODUCTION

### The national legal system

Bulgaria is a unitary state where the Constitution<sup>94</sup> and ratified international instruments are directly enforceable by the courts and take precedence over conflicting national provisions. The legal system is continental, with no *stare decisis*. The Constitutional Court (CC) has exclusive authority to bindingly interpret the Constitution, as well, *inter alia*, to rule on: acts of Parliament's constitutionality; international treaties' compatibility with the Constitution prior to their ratification; primary legislation's compatibility with binding international law, including *jus cogens*. Only a limited number of public institutions have standing to seize the CC. There is no right to individual petition. Secondary legislation cannot contradict primary legislation and is subject to repeal by the administrative courts. All courts are bound to apply higher-ranking constitutional and international norms instead of contradicting primary legislation. They have a symmetrical duty to apply primary legislation instead of contradicting secondary legislation.

The Protection Against Discrimination Act 2004 (PADA)<sup>95</sup> is the main anti-discrimination law, adopted to transpose the EU anti-discrimination directives. It is a single equality law universally banning discrimination on a range of grounds, providing uniform standards of protection and remedies, complete with specific bans in particular fields. PADA sets up a specialized independent equality body – the Protection Against Discrimination Commission (PADC), with the mandate of a quasi-jurisdiction to decide cases and sanction discrimination. Its decisions are subject to two-instance judicial review before the administrative courts. PADA also provides for parallel judicial recourse to the civil courts.

In parallel, other, pre-existing schematic prohibitions of discrimination are still in place under other laws governing specific fields, as well as under the Constitution. There is no coherence between PADA and other, older, legislative bans on discrimination, with differences in protected grounds, exceptions, and definitions. Further, there is inconsistency between PADA and other laws governing particular fields that provide for directly or indirectly discriminatory norms, contradicting PADA's universal ban.<sup>96</sup> Insignificant effort has been made to harmonise the legislation so as to ensure that PADA prevails over conflicting norms.

Apart from PADA, the other significant law on equality is the Integration of Persons with Disabilities Act (IPDA),<sup>97</sup> which bans disability discrimination specifically and provides for positive and accommodation duties in a number of fields. Further, a number of laws governing specific fields, such as education, employment, public procurement, and taxation, provide for positive measures on grounds such as disability, age, and caring responsibilities. Most of these laws predate PADA and are not consistent with it.

### List of main legislation transposing and implementing the directives

Protection Against Discrimination Act (*Закон за защита от дискриминация*), adopted 2003, in force as of 2004, latest amendment 30 December 2016. Grounds: sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation,

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<sup>94</sup> Constitution (*Конституция*), adopted July 1991, latest amendment December 2015.

<sup>95</sup> Protection Against Discrimination Act (*Закон за защита от дискриминация*), adopted 2003, in force as of 2004, latest amendment 30 December 2016.

<sup>96</sup> Examples of directly discriminatory norms include Article 141 of the Defense and Armed Forces Act (age and mental/ physical ability requirements for access to service) and Article 155 (1.4) and Article 155 of the Ministry of the Interior Act (age and mental/ physical ability requirements for access to service; maximum age for service).

<sup>97</sup> Integration of Persons with Disabilities Act (*Закон за интеграция на хората с увреждания*), adopted 2004, in force as of 2005, latest amendment 14 November 2017.

family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to. Scope: universal.

Integration of Persons with Disabilities Act (*Закон за интеграция на хората с увреждания*), adopted 2004, in force as of 2005, latest amendment 14 November 2017. The ground covered is disability. The scope is universal.

## **1 GENERAL LEGAL FRAMEWORK**

### **Constitutional provisions on protection against discrimination and the promotion of equality**

The Constitution includes the following articles dealing with non-discrimination:

Article 6 - a general clause of universal application, covering race, national origin, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status, and property status. This provision applies to all areas covered by the directives. Its material scope is broader than those of the directives. It is directly applicable. It can be enforced against private actors, as well as the State.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law: sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to (Constitution, Article 6 (2); PADA, Article 4).<sup>98</sup>

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

National law only defines *disability* and *sexual orientation*. Under IPDA, § 1.1 Additional Provision, *disability* is “any loss or impairment of the anatomical structure, physiology, or psychology of an individual.” Further, under IPDA, § 1.2 Additional Provision, *long-term disability* is “anatomical, physiological, or psychological impairment resulting in a long-term reduction of an individual’s abilities to perform activities in a manner and to an extent possible for a healthy individual, where the medical authorities have certified a reduction in working ability or have stipulated a type and degree of disability of 50 per cent or more.”<sup>99</sup> These definitions are also applicable for purposes of PADA. If the fact of disability is disputed in a court case, the above definitions will be determinative of the issue. In practice, disability will be expected to be proven by a medical certificate.

Both the definition of *disability* (general) and the definition of *long-term disability* are applicable for PADA purposes across fields and forms of discrimination. Where a person’s disability is a long-term disability in terms of facts, and they can prove it, they will use the definition of *long-term disability* for IPDA purposes as the latter definition is linked to enhanced entitlements under IPDA. Under PADA, equality rights are the same for *disability* and for *long-term disability* across fields and forms of discrimination. Based on the specifics of a particular case, one or the other definition might be more relevant, depending on claimant’s objectives, or they might be equivalent.

Persons with long-term disabilities are entitled to: medical and social rehabilitation, including various specified therapeutic procedures and aids (article 15 IPDA); a quota of adapted workplaces under the Labour Code – half of the total number of workplaces adapted for persons with disabilities (article 27 IPDA); tax alleviations (article 41 IPDA); financial aid for purposes of using specified services (article 41a IPDA); a monthly allowance for purposes of social integration, including specified expenditures, such as transportation, telecommunications, training, etc. – for persons over 18 years of age who have lasting disabilities and do not live in institutions (article 42 IPDA); a further allowance based on the degree of disability – for persons over 18 years of age with a degree of 50 % or more (article 42b IPDA); allowances for specific purposes, such as buying and adapting a car, adapting a home, and accompanying and interpretation assistance (article 44 IPDA); a special right to municipal housing (article 48). Employers are entitled to apply for governmental funding for purposes of making a workplace accessible for a person with a long-term disability, or to adapt or equip a workplace for such a person (article 25).

Specific sub-categories of persons with long-term disabilities, such as persons with long-term disabilities with a degree of reduced working ability over 90 %, children with long-term disabilities of 71 % or more, persons over 18 years of age with long-term disabilities with a degree of reduced working ability 50 % or more, and others, are entitled to further allowances for specific purposes (article 42g, article 42d and others).

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Mostly, the grounds overlap but some, like sexual orientation and “any other ground provided for by law or by international treaty Bulgaria is a party to”, are only protected under PADA, and not under the Constitution.

<sup>99</sup> This definition is reproduced literally in the Employment Encouragement Act (*Закон за насърчаване на заетостта*), Additional Provision, § 1(29).

The definition of *disability* is more liberal and inclusive than the one elaborated by CJEU in the case of *Ring and Scouboe Werge* as it covers *any* limitation regardless of whether it is long-term or not. On the other hand, this domestic definition makes no mention of the interaction with societal barriers that produces a person's hindrance. That amounts to a lack of recognition that persons with disabilities have no limitation as such but only in relation to slanted societal infrastructures, including attitudes.

Under the Automobile Transport Act,<sup>100</sup> Additional Provisions, § 1 (42) "a person with disabilities" and "a person of reduced mobility" are defined within the meaning of Regulation (EU) No. 181/2011. Under the Railway Transport Act,<sup>101</sup> Additional Provisions, § 1 (41), "a person with disabilities" or "a person of reduced mobility" is defined as a person within the meaning of Article 3, Paragraph 15 of Regulation (EC) No. 1371/2007.

Further, secondary legislation defines "persons of reduced mobility" as including persons with physical, sensory, mental and combined disabilities, pregnant women, persons accompanying young children, persons temporarily hindered in their movements (in plaster, crutches), persons carrying large and heavy items, older people, persons shorter than 150 cm, including children, persons taller than 200 cm, and persons who don't understand or speak Bulgarian.<sup>102</sup> Another piece of secondary legislation defines "persons of reduced mobility" as including persons with disabilities within the meaning of IPDA, as well as older people, pregnant women, and persons accompanying young children.<sup>103</sup>

Similar or broader definitions of persons of reduced mobility are included in a number of other secondary legal acts:

- Ordinance No. 22 of 22 December 2008 Concerning Technical Requirements For Ships On Inland Water Routes, Additional Provisions, § 1 (107):<sup>104</sup> "persons of reduced mobility" are persons with specific problems in using public transport, as well as older people, handicapped people or with sensory disabilities, persons in wheelchairs, pregnant women and persons accompanying young children";
- Ordinance No. 261 of 13 July 2006 on the General Rules for Compensating and Assisting Passengers in Cases of Refusal by an Air Carrier to Let Them on Board an Aircraft and in Cases of Cancellation or Delay of a Flight, Additional provisions, § 1 (3):<sup>105</sup> "a person of reduced mobility" is a person whose mobility is reduced in using transportation due to physical inability (sensory or motional, permanent or temporary), intellectual disability, age or any other reason for inability and whose position requires special attention and adaptation of the services offered to all passengers to the needs of this person".

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<sup>100</sup> Automobile Transportation Act (*Закон за автомобилните превози*), adopted September 1999, latest amendments 21 November 2017.

<sup>101</sup> Railroad Transportation Act (*Закон за железопътния транспорт*), adopted November 2000, latest amendments 28 December 2017.

<sup>102</sup> Ordinance No. 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings (*Наредба № 4 от 1 юли 2009 г. за проектиране, изпълнение и поддържане на строежите в съответствие с изискванията за достъпна среда за населението, включително за хората с увреждания*; adopted July 2009, latest amendments July 2011), Additional Provisions, § 1(1). This ordinance applies universally as concerns architectural and infrastructural accessibility.

<sup>103</sup> Ordinance No. 20 of 8 September 2011 Concerning Safety Rules and Standards for Passenger Ships (*Наредба № 20 от 8 септември 2011 г. относно правилата за безопасност и стандартите за пътническите кораби*; adopted September 2011, latest amendments June 2017), Additional Provision §1(22). This ordinance applies to passenger ships.

<sup>104</sup> Ordinance No. 22 of 22 December 2008 on Technical Requirements for Ships Sailing Interior Waterways (*Наредба № 22 от 22 декември 2008 г. за техническите изисквания към корабите, плаващи по вътрешните водни пътища*. Adopted December 2008, latest amendments February 2014.

<sup>105</sup> Ordinance No. 261 of 13 July 2006 on the General Rules for Compensating and Assisting Passengers in Cases of Refusal by an Air Carrier to Let Them on Board an Aircraft and in Cases of Cancellation or Delay of a Flight (*Наредба № 261 от 13.07.2006 г. за общите правила за обезщетяване и оказване съдействие на пътници при отказ на въздушен превозвач да ги допусне на борда на въздухоплавателното средство и при отменяне или забавяне на полет*). adopted July 2006, no amendments.

Under the Pre-School and School Education Act, there are definitions for “a pupil with chronic illnesses” and for “special educational needs”.<sup>106</sup> Under the Ordinance on Integrative Education, there is a definition for “communicative impairments”.<sup>107</sup>

The Supreme Administrative Court has held that while a sickness does not equate disability, certain cancers do meet the definition of disability under international law.<sup>108</sup>

*Sexual orientation* is defined under PADA, Additional Provision, § 1(10), as “heterosexual, homosexual or bisexual orientation.” The Supreme Administrative Court (SAC), in a 2014 case, implicitly defined sexual orientation as being innate, delegitimizing sexual orientation choice.<sup>109</sup>

National discrimination law does not define race, ethnic origin, religion or belief, or age.

The Employment Encouragement Act (EEA),<sup>110</sup> Additional Provision, § 1(4a) defines “groups of unequal status on the labour market”, intersecting with a number of protected grounds.<sup>111</sup> This definition is only relevant for purposes of the positive measures provided for under EEA. EEA, Additional Provision, § 1(18) defines “adult”, applicable to the positive measures under EEA.<sup>112</sup>

Further, the Religious Denominations Act (RDA)<sup>113</sup> defines a “religious denomination” as “a set of beliefs and principles, a religious community, and its religious institution”.<sup>114</sup> A “religious community” is defined as a “voluntary union of natural persons for purposes of manifestation of a certain religion, and performance of worship, religious rituals and ceremonies.”<sup>115</sup> RDA further defines a “religious institution” as “a religious community registered in accordance with [RDA] that has the capacity of a legal person, governing bodies, and a statute.”<sup>116</sup> There is no defined relationship, in law or case law, between these definitions and religion as a protected ground within the meaning of PADA.

### 2.1.2 Multiple discrimination

In Bulgaria, a prohibition of multiple discrimination is included in the law. PADA defines multiple discrimination as “discrimination based on more than one [protected] grounds”.<sup>117</sup> PADA places a statutory duty on public authorities to give priority to positive measures for the benefit of multiple discrimination victims.<sup>118</sup> PADC hears multiple discrimination cases

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<sup>106</sup> Pre-School and School Education Act (Закон за предучилищното и училищното образование), entry into force 1 August 2016, latest amendments 12 December 2017, Additional Provisions, § 1.29 and § 1.27.

<sup>107</sup> Ordinance on Integrative Education (Наредба за приобщаващото образование), entry into force 27 October 2017, Additional Provisions, § 1.2.

<sup>108</sup> See more information in Section 12.2 below.

<sup>109</sup> Supreme Administrative Court, Decision No. 9467 of 7 July 2014.

<sup>110</sup> Employment Encouragement Act (Закон за насърчаване на заетостта), adopted December 2001, entry into force January 2002, latest amendments 28 December 2017.

<sup>111</sup> “Groups of unequal status on the labour market” shall be groups of unemployed people of lesser competitiveness on the labour market, including: unemployed youth; unemployed youth with permanent disabilities; unemployed youth educated in social care institutions; long-term unemployed persons; unemployed persons with permanent disabilities; unemployed persons – single parents (adoptive parents) and/or mothers (adoptive mothers) with children not older than 3 years; unemployed persons who have served a prison sentence; unemployed persons older than 50 years; unemployed persons with elementary or lesser schooling and no vocational qualification; other groups of unemployed persons.”

<sup>112</sup> “Adult” shall be a person of working age who is not being educated in [school] or [university] and who has not reached the respective retirement age for women and men provided for under the Social Security Code”.

<sup>113</sup> Закон за вероизповеданията, adopted December 2002, latest amendments October 2015.

<sup>114</sup> Religious Denominations Act (RDA) (Закон за вероизповеданията), Additional Provisions, § 1 (1).

<sup>115</sup> RDA, Additional Provisions, § 1 (2).

<sup>116</sup> RDA, Additional Provisions, § 1 (3).

<sup>117</sup> Protection Against Discrimination Act (PADA) (Закон за защита от дискриминация), Additional Provisions, § 1 (11).

<sup>118</sup> PADA, Article 11 (2). Under Article 11 (1), authorities are placed under a general statutory duty to take positive action whenever necessary to achieve the legislation’s goals.

sitting in an extended panel of 5 members (rather than 3).<sup>119</sup> The law does not provide for higher compensation levels in cases of multiple discrimination.

In Bulgaria, there is no case law dealing with multiple discrimination. While cases where complainants have alleged more than one ground have been decided by PADC and the administrative courts on judicial review, their rulings have discussed none of the implications of a plurality of grounds.

In one case decided by the Supreme Administrative Court (SAC) in 2016, PADC ruled that a parent of a child with a disability was discriminated against on grounds of disability by association and on grounds of personal status as that parent was a convicted person, and under secondary legislation, convicted persons were not eligible to qualify as “personal assistants” (a paid for position) to their children with disabilities.<sup>120</sup> The first-instance administrative court and SAC confirmed that PADC ruling. SAC expressly rejected an argument by the respondent Minister of Labour and Social Policy to the effect that the complainant could not be discriminated against on grounds of disability as she had no disability herself. SAC held that the parent was directly discriminated against on grounds of disability due to her association to her child. The courts, however, failed to take into account the fact that the grounds for the parent’s less favourable treatment – her exclusion from eligibility as a personal assistant to a person with a disability, was not her child’s disability but her own conviction. They further failed to reason about the case from the perspective of multiple discrimination.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Bulgaria, the following national law (including case law) prohibits discrimination based on perception or assumption of what a person is:

PADA defines “on [protected] grounds” as “on grounds of the actual, past or present, or *presumed* fact of one or more of these characteristics [...]”.<sup>121</sup> Therefore, discrimination on perceived or assumed grounds is explicitly prohibited. Case law by both PADC and the courts expressly recognises this.

#### **b) Discrimination by association**

In Bulgaria, the following national law (including case law) prohibits discrimination based on association with persons with particular characteristics:

PADA defines “on grounds of” as “on grounds of the actual, past or present, or presumed fact of one or more of these characteristics in the person discriminated against, or in another person who is, actually or presumably, associated with the person discriminated against, where this association is a cause of the discrimination”.<sup>122</sup> Therefore, discrimination by association, including presumed association, is explicitly banned. Case law by PADC expressly recognises this. The law is in line with the judgment in Case C-303/06.

As discussed in the previous section, SAC held in 2016 that a parent of a child with a disability was discriminated against on grounds of disability by association by being rendered ineligible under the legislation to qualify as a “personal assistant” (a paid for position) to their child (for being a convict).<sup>123</sup>

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<sup>119</sup> PADA, Article 48 (3).

<sup>120</sup> PADC Decision No 126 of 1 April 2014.

<sup>121</sup> PADA, Additional Provisions, § 1 (8).

<sup>122</sup> PADA, Additional Provisions, § 1 (8).

<sup>123</sup> PADC Decision No 126 of 1 April 2014.

## 2.2 Direct discrimination (Article 2(2)(a))

### a) Prohibition and definition of direct discrimination

In Bulgaria, direct discrimination is prohibited in national law (PADA, Article 4 (1); IPDA, Article 3). It is defined. PADA, Article 4 (2) defines direct discrimination as "treating a person on grounds [...] less favourably than another person is treated, has been treated, or would be treated in comparable similar circumstances". The wording "comparable similar" has not led to a restrictive interpretation contrary to EU law. The "a person" language has not been interpreted as limiting the scope of protection to an individual, rather than a group of individuals, and is not likely to be interpreted in that fashion.

On 30 December 2016, PADA was amended, and a new definition of "unfavourable treatment" was adopted. The new definition for unfavourable treatment is as follows: "Unfavourable treatment shall be any act, action or omission that results in less favourable treatment of a person compared to another on [protected] grounds, or that may place a person or persons who have a [protected] characteristic at a particular disadvantage compared to other persons." The former definition was as follows: "Unfavourable treatment shall be any act, action or omission that directly or indirectly affects rights or legitimate interests."

The new definition was adopted as a follow-up to the ruling of the Court of Justice of the European Union (CJEU) in case C-83/14 (the "Chez" case).<sup>124</sup> The new definition seeks to clarify that less favourable treatment is not restricted to rights provided for under law. The effect, however, is dubious, the language being unclear overall (unfavourable treatment shall result in less favourable treatment).

IPDA, Paragraph 1.3, Additional Provisions defines direct discrimination as "placing a person on grounds of disability at a disadvantage compared to another person who was, is, or could be placed in comparable similar circumstances".

### b) Justification of direct discrimination

PADA does not permit general justification for direct discrimination with respect to any ground. It provides for an exhaustive list of specific exceptions for various protected grounds, including the six EU grounds.<sup>125</sup> Because of the open-ended list of protected grounds, combined with the universal scope of the ban, this closed list of express exceptions should generate problems for future jurisprudence. So far there have not been any problems with the five grounds relevant for this report. Problems with other grounds, such as personal status or property status, are out of scope for this report.

#### 2.2.1 Situation testing

### a) Legal framework

In Bulgaria, situation testing is permitted in national law. The law is silent, but general rules on evidence imply that testing results are admissible. General civil evidentiary rules put no limit on the admissible types of proof.<sup>126</sup> Under general court procedure, judges and PADCs are free to assess any evidence according to their own 'inner conviction'. Therefore, testing is implicitly allowed as a matter of course. The admissibility and merit of testing data in a particular case will be for the court to decide.

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<sup>124</sup> Judgment of the Court (Grand Chamber) of 16 July 2015  
"CHEZ Razpredelenie Bulgaria" AD v Komisija za zashtita ot diskriminatsia.

<sup>125</sup> PADA, Article 7.

<sup>126</sup> Civil Procedural Code (*Граждански процесуален кодекс*), Article 12.



The civil courts, including the Supreme Court of Cassation, have expressly rejected respondents' allegations that activist testers were not credible as witnesses because of their professional commitment to rights defence, or because of the purposefulness of the testing exercise.<sup>127</sup> Judges have explicitly stated that as long as, based on an overall assessment of the case file, there is no other evidence to refute testers' allegations and testimonies, the latter have to be credited. In a Roma access to employment case, the court expressly held that testing carried out by activist witnesses was justified by their involvement in rights work. Judges have expressly held that activist claimants of declared affiliation with Roma rights groups have suffered more serious non-pecuniary damages because their sensitivity to discrimination was exacerbated as a result of their rights work.<sup>128</sup>

Neither judges, nor PADC have expressed misgivings about testing being potentially misleading or provocative. They have not stipulated methodological requirements or other guarantees against bias. They have responded to testing as a natural means to verify a complaint of discrimination. PADC has not only unquestioningly accepted testing as a valid source of facts and evidence, but has done its own testing to verify complaints.<sup>129</sup> It has explicitly stated that testing results proving the invalidity of a respondent's pretext constituted *prima facie* discrimination mandating a shift of the burden of proof.

#### b) Practice

In Bulgaria, situation testing has been used in practice. NGO lawyers and activists have used testing as a means to procure facts and evidence, as well as claimant figures for strategic litigation in defence of Roma rights. They have tested Roma's access to employment, as well as to hotel/ restaurant/ café and other catering services, including public swimming pools. In one case, testing accompanied by TV cameras was successfully used to document a practice of refusing Roma equal access to court buildings, and then admitted in court as evidence. In some cases, including a gay rights case, activist lawyers have used testing for purposes of discrediting respondents' pretexts within the framework of a pending case (rather than prior to initiating litigation).<sup>130</sup> In a case against Sofia University concerning denial of access to a student sauna, the claimants successfully tested respondent's defence that not gay men but non-students were excluded: testing revealed that non-gay non-students gained admission.<sup>131</sup>

### 2.3 Indirect discrimination (Article 2(2)(b))

#### a) Prohibition and definition of indirect discrimination

In Bulgaria, indirect discrimination is prohibited in national law (PADA, Article 4 (1); IPDA, Article 3). It is defined. PADA, Article 4 (3) defines indirect discrimination as "placing a person or persons who have a [protected] characteristic, or, who without having such a characteristic, together with the former suffer less favourable treatment, or are placed at a particular disadvantage deriving from an apparently neutral provision, criterion, or practice, unless the provision, criterion, or practice are objectively justified with a view to a legitimate aim and the means to achieving that aim are appropriate and necessary." This definition was adopted on 30 December 2016 as follow up to CJEU's ruling in case C-83/14 (the *Chez* case). Under the former definition, indirect discrimination was "placing a person on [protected] grounds in a less favourable situation compared to other persons through an apparently neutral provision, criterion, or practice, unless that provision, criterion, or

<sup>127</sup> *Inter alia*, Supreme Court of Cassation, Decision No. 591 of 12 March 2008.

<sup>128</sup> *Inter alia*, Sofia District Court, Decision in case No. 1969/2004, 9 July 2004; Pazardzhik Regional Court, Decision No. 622 in case No. 675/2005.

<sup>129</sup> Protection Against Discrimination Commission (PADC) members, including a Roma person, and staff have visited unannounced a cafe and a swimming pool to verify whether older clients and Roma are served.

<sup>130</sup> For instance, Sofia District Court, Decision in civil case No. 6520/2004, 21 April 2005. No information on the existence of newer case law is available.

<sup>131</sup> Sofia District Court, Decision in civil case No. 6520/2004, 21 April 2005.

practice is objectively justified with a view to a legitimate aim and the means to achieving that aim are appropriate and necessary.” The new definition seeks to clarify that indirect discrimination by association is banned. The quality of its wording, however, is inadequate, calling into question its effect.

IPDA, Paragraph 1.4, Additional Provisions defines indirect discrimination as “placing a person on grounds of disability at a disadvantage compared to other persons through an apparently neutral provision, criterion, or practice, unless that provision, criterion, or practice is objectively justified by a legitimate aim unrelated to the disability, and the means to achieve that aim are appropriate and do not exceed what is necessary to achieve it”.

b) Justification test for indirect discrimination

The test for justification is necessity. Neither the law (PADA, Article 4 (3)), nor the case law has specified whether this is to be understood as strict proportionality or mere proportionality. There is no legislative or judicial guidance on what constitutes a “legitimate aim”. There is a dearth of indirect discrimination cases and the case law has not evolved a standard for either “a legitimate aim” or “an appropriate and necessary measure”. As a rule, PADC and judges have failed to undertake a proper analysis of necessity, including by looking into alternatives to impugned measures. In most cases, they have accepted declarations of necessity by respondents without questioning the linkage between the asserted aim and the specific measures. In this way, they have failed to properly apply the shifting burden of proof rule, *de facto* excusing respondents of their onus to establish a justification for disparate impact.

A number of judicial decisions have shown a lack of understanding of the concept of indirect discrimination, some fusing it with (not only covert) direct discrimination and terming ‘indirect discrimination’ what was really less favourable treatment.<sup>132</sup> The adverse implications in such cases are that the absolute ban on direct discrimination is then diluted by the general justification test valid for indirect discrimination.

c) Comparison in relation to age discrimination

In relation to age discrimination, national law does not specify how a comparison is to be made.

### **2.3.1 Statistical evidence**

a) Legal framework

In Bulgaria, there are national rules permitting data collection. Those rules are not in equality law and make no provision on using data for purposes of equality litigation or positive measures. Such use is implicitly permissible, on the same grounds as testing – because under general evidentiary rules, any evidence the court finds relevant is admissible.

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<sup>132</sup> For instance, recently the Supreme Administrative Court held that there was indirect discrimination against a Muslim prison inmate whose food included pork (denial of reasonable accommodation) compared to Muslim inmates in another prison who did receive food accommodation: Decision No. 2514 of 21 February 2014, case No. 10989/2013.

Data collection is provided for under the Statistics Act,<sup>133</sup> the Protection of Personal Data Act,<sup>134</sup> the Census 2011 Act,<sup>135</sup> the Integration of Persons with Disabilities Act,<sup>136</sup> the Ministry of Interior Act,<sup>137</sup> the Bulgarian Personal Documents Act,<sup>138</sup> the Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection,<sup>139</sup> and the Ordinance on Integrative Education.<sup>140</sup> These laws provide for data collection regarding: racial or ethnic origin; national origin; mother tongue; political, religious or philosophical convictions; membership in political parties, or organisations with political, religious, philosophical or trade union aims; health status/ disability; sexual life; personal life; human genome; or unlawful acts committed; nationality; sex; age; education; language.<sup>141</sup>

Such data may not be collected unless the person concerned consents, or in specific exceptions accompanied with procedural guarantees. The exceptions include where:

- 1) this is necessary to carry out specific duties under labour law;<sup>142</sup>
- 2) it is necessary to protect human life or health, and the person concerned is unable to give their consent;<sup>143</sup>
- 3) the data is collected by a non-profit organisation, including with a political, philosophical, religious or trade union aim, in the course of its lawful activities, provided that this only involves the organisation's members or regular associates, and the data is not published without the consent of the person concerned;<sup>144</sup>
- 4) the data has been published by the person concerned, or its collection is necessary for rights enforcement in court;<sup>145</sup>
- 5) this is necessary for medical prevention or diagnostics, or provision of health services, provided that the data is processed by a medical professional or another person legally under a duty to keep a professional secret;<sup>146</sup>
- 6) this is only for journalistic or artistic purposes, provided that the right to privacy of the person concerned is not infringed;<sup>147</sup>
- 7) or a special law provides so.<sup>148</sup>

No law provides for the collection of ground-disaggregated data explicitly for purposes of equality litigation or policies.<sup>149</sup>

<sup>133</sup> Statistics Act (*Закон за статистиката*; adopted June 1999, latest amendment 15 February 2013), Article 21.

<sup>134</sup> Protection of Personal Data Act (*Закон за защита на личните данни*; adopted January 2002, latest amendment 28 December 2017), Article 1 (3-5).

<sup>135</sup> Census 2011 Act (*Закон за преброяване на населението и жилищния фонд в България през 2011 г.*), adopted May 2009, latest amendment 28 January 2011), Article 2.

<sup>136</sup> Integration of Persons with Disabilities Act (IPDA), Articles 9 and 29.

<sup>137</sup> Ministry of Interior Act (*Закон за Министерството на вътрешните работи*; adopted June 2014, latest amendment 28 December 2017), Article 10 (2), Articles 25–26.

<sup>138</sup> Bulgarian Personal Documents Act (*Закон за българските лични документи*; adopted August 1998, latest amendment 5 December 2017), Articles 18 and 65.

<sup>139</sup> See Council of Ministers Decree No. 144 of 19 July 2017 at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=116399>, Articles 12 (1 and 3) and 15.1.

<sup>140</sup> Ordinance on Integrative Education, Article 145 (2) – concerning pupils with special educational needs.

<sup>141</sup> Respectively, Statistics Act, Article 21 (2); Protection of Personal Data Act, Article 5; Census 2011 Act, Article 6 (3); Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection, Article 12 (1 and 3) and 15.1; Ordinance on Integrative Education, Article 145 (2). The Ministry of the Interior Act does not define personal or sensitive data. The Bulgarian Personal Documents Act defines personal data as “any information regarding a particular natural person” (Paragraph 1.13 of the Additional Provisions).

<sup>142</sup> Protection of Personal Data Act, Article 5 (2.1).

<sup>143</sup> Protection of Personal Data Act, Article 5 (2.3).

<sup>144</sup> Protection of Personal Data Act, Article 5 (2.4).

<sup>145</sup> Protection of Personal Data Act, Article 5 (2.5).

<sup>146</sup> Protection of Personal Data Act, Article 5 (2.6).

<sup>147</sup> Protection of Personal Data Act, Article 5 (2.7).

<sup>148</sup> Protection of Personal Data Act, Article 5 (2.2).

<sup>149</sup> While “data collection [...] necessary for rights enforcement in court” – point (4), could theoretically be construed as applicable to equality rights also, this is not express, and there was no such intention behind this provision. The legislative intent was more likely to authorise the police to provide individuals with data concerning the identity of parties they might wish to sue in court. This would differ from data collection for

Public bodies using positive measures do use statistics to design those.<sup>150</sup> Statistics are collected either by the National Statistical Institute, which is a public institution governed under the Statistics Act, or by public services themselves, or by private research agencies on commission.<sup>151</sup>

In Bulgaria, statistical evidence is permitted by national law in order to establish indirect discrimination. National law implicitly permits any type of evidence in civil cases, including statistical evidence.<sup>152</sup> There are no particular conditions for admission of statistics. The admission and evaluation of all evidence, implicitly including statistics, is left to the discretion of judges.<sup>153</sup>

#### b) Practice

In Bulgaria, statistical evidence in order to establish indirect discrimination is used in practice. It is not widespread, but it is not uncommon. There has been no reluctance on the part of judges or PADC to consider statistics. There is no such controversy.

Sofia trial court judges have rendered several decisions in cases concerning sex quotas for admission to university. The courts have accepted as statistically established fact that women with higher academic scores have been denied admission for the benefit of men with lower results. In other cases, courts have accepted the predominance of Roma in the ethnic composition of certain residential areas as a fact based on statistics.<sup>154</sup>

## 2.4 Harassment (Article 2(3))

#### a) Prohibition and definition of harassment

In Bulgaria, harassment is prohibited in national law. It is defined. Under PADA, Additional Provisions, § 1 (1) it is "any unwanted conduct related to [protected] grounds [...] and manifested physically, verbally or in any other manner, having the purpose or effect of violating the dignity of a person and of creating a hostile, degrading, humiliating, offensive, or intimidating environment". The personal scope of PADA is universal: any person may be a victim and every person is bound by the bans. The material scope of PADA is universal as well: the bans apply to all rights and legitimate interests. In many cases, both PADC

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policy-, or law-making ends. Further, personal data is not statistical data. Furthermore, disaggregation by ground is not provided for. While it may be possible to gather data regarding the race of someone in particular (based on police perceptions), this is not equivalent to gathering race-disaggregated statistics. More importantly, this provision only authorises data collection in exceptional cases (to be narrowly construed as a matter of course) and does not mandate it.

<sup>150</sup> In documents providing for positive measures, Government institutions have used statistical data to analyse the status quo. For example, the National Programme for Improvement of the Living Conditions of Roma 2005-2015, in its "Analysis of the Situation" part, available at: [http://www.nccedi.government.bg/upload/docs/NRP\\_07.03.2006\\_Final\\_2.htm](http://www.nccedi.government.bg/upload/docs/NRP_07.03.2006_Final_2.htm) (in BG) (this programme's timeline is past but there is no replacement); the Health Strategy for Persons in Unequal Position Belonging to Ethnic Minorities, the "Identification of the Problem" part, available at: [http://www.nccedi.government.bg/upload/docs/zdravna\\_strategia\\_prieta.htm](http://www.nccedi.government.bg/upload/docs/zdravna_strategia_prieta.htm) (in BG).

<sup>151</sup> The National Statistical Institute gathers statistics based on self-determination. Other public services gather statistics based on self-determination in some cases, and, in others, on perception. Private sociological agencies gather statistics of both types.

<sup>152</sup> Civil Procedural Code, Article 12.

<sup>153</sup> Civil Procedural Code, Article 12 in conjunction with Article 10.

<sup>154</sup> Inter alia, Plovdiv District Court, Decision No. 185 in civil case No. 1330/2005, 01.02.2006; Plovdiv Regional (appeals) Court, Decision No. 1934 of 24.10.2006 in civil case No. 862/2006; and Supreme Court of Cassation, Decision No. 1302 in civil case No. 1602/2006, 28.11.2007; PADC, Decision No. 58 in case No. 10/2006, 29.11.2006. Those statistics were presented by complainants in some cases, by respondents in others, or established in proceedings by witness testimony, or by expert opinion on the basis of official census statistics.

and the courts have qualified public hate speech/ group negative stereotyping as harassment.<sup>155</sup>

The term `a person` in the definition has not been interpreted as limiting the scope of protection to an individual, rather than a group, and is not likely to be interpreted in that way. In fact, in numerous cases of hate speech targeting communities, PADA and the courts have found harassment.

In Bulgaria, harassment does explicitly constitute a form of discrimination: PADA, Article 5.

In 2016, the Supreme Administrative Court (SAC) ruled that for harassment to be found, different treatment had to be established, and that treatment had to be "conscious".<sup>156</sup> This is as yet an isolated instance and an insufficient basis to conclude that SAC generally requires intent, and that, therefore, its case law is in breach of EU law.

#### b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Bulgaria, the employer and the employee are liable. Each individual who performs an act of discrimination, including harassment, can be held liable. In addition, employers can be held liable for compensation for damages ensuing from actions of their employees or others carrying out work for them. This is a matter of general tort law, applicable to any legal person.<sup>157</sup> Further, persons, including employers, can be held liable and sanctioned by a fine if they knowingly aided an act of discrimination, including harassment, by a third party.<sup>158</sup> If an employee suffers harassment at the workplace by a third party, and complains about it to the employer, s/he has a duty to take action to stop the harassment.<sup>159</sup> If an employer fails to take such action, the affected employee could take legal action against them.

## **2.5 Instructions to discriminate (Article 2(4))**

#### a) Prohibition of instructions to discriminate

In Bulgaria, instructions to discriminate are prohibited in national law. Instructions are not defined. PADA bans incitement to discrimination, going beyond the directives' requirement, and defines it to expressly include instructions to discriminate.<sup>160</sup> However, this definition may not be compatible with the Directives because it requires direct intent as an element. In many cases, both PADA and the courts have qualified public hate speech/ group negative stereotyping as incitement to discrimination.<sup>161</sup>

In Bulgaria, instructions do explicitly constitute a form of discrimination. Under PADA, Article 5, incitement to discrimination, including instructions to discriminate, is expressly defined as a form of discrimination.

#### b) Scope of liability for instructions to discriminate

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<sup>155</sup> For instance: Supreme Administrative Court, Decision No. 16554 of 11 December 2013 in case No. 27/2013; Protection against Discrimination Commission, Decision No. 397 of 29 October 2014 in case No. 39/2012.

<sup>156</sup> SAC Decision No. 2368 of 1 April 2016 in case No. 7838/2015, p. 2.

<sup>157</sup> Obligations and Contracts Act (*Закон за задълженията и договорите*), Article 49.

<sup>158</sup> PADA, Article 8.

<sup>159</sup> PADA, Article 17.

<sup>160</sup> PADA, Article 5 in conjunction with Additional Provisions, § 1 (5).

<sup>161</sup> For example: Supreme Administrative Court, Decision No. 16554 of 11 December 2013 in case No. 27/2013; Protection against Discrimination Commission, Decision No. 397 of 29 October 2014 in case No. 39/2012.

In Bulgaria, the instructor and the discriminator are separately liable.<sup>162</sup> The instructor is liable for the instruction, and not for the discrimination that ensued. There is no information on case law concerning instructions as such. The case law on incitement concerns hate speech.

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Bulgaria, the duty to provide reasonable accommodation is included in the law. It is not defined. PADA, Article 16, provides for accommodation for persons with disabilities in employment.<sup>163</sup> The limit of the duty is when "costs are unfoundedly large and would seriously hinder" the employer.<sup>164</sup> An identically-worded duty for employers is reproduced under IPDA.<sup>165</sup> Other than this language, there is no guidance under the law what is "reasonable" or a "disproportionate burden".

Under the Labour Code, employers are under a duty to provide accommodation for workers who are unable to perform their job because of illness or accident.<sup>166</sup> This duty pre-dates both PADA and IPDA, as well as the directive.<sup>167</sup> It has no disproportionate burden limit. It is based on instruction by the health authorities. An employer who fails to comply with such instruction owes the employee compensation.<sup>168</sup>

Under the Civil Servant Act, there is an absolute duty for employers to "adapt the workplace of the civil servant with a permanent disability in a way that makes it possible for the service to be carried out."<sup>169</sup>

Under the Healthy and Safe Work Conditions Act, employers are under a duty to provide the appropriate facilities for employees with reduced work capability, e.g. people with disabilities, at their workplaces.<sup>170</sup> Employers are to be assisted and consulted in adapting the job to employees' capabilities, considering their physical and mental health, by special labour medicine authorities.<sup>171</sup>

The lack of definition is not on record to have caused difficulties in implementation because there have been no reasonable accommodation cases yet, as far as information is available.

- b) Practice

The duty applies to all employment relationships. There are no criteria under the law or case law for assessing 'unreasonable' or 'disproportionate'. There is no provision on taking into account the availability of financial assistance from the State.

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<sup>162</sup> PADA, Article 71 and Article 78.

<sup>163</sup> The provision reads: "The employer is under a duty to adjust the workplace to the needs of a person with a disability upon the latter's hiring or when the person's disability occurs following their hiring, unless the costs of this are unfoundedly large and would seriously hinder the employer".

<sup>164</sup> PADA, Article 16.

<sup>165</sup> IPDA, Article 24.

<sup>166</sup> Labour Code (*Кодекс на труда*), Article 314. Such accommodation can include both alleviations in work conditions for the same job, or reassignment to another job.

<sup>167</sup> Labour Code, including this particular provision, has been in force since 1987.

<sup>168</sup> Labour Code, Article 317 (4).

<sup>169</sup> Civil Servant Act (*Закон за държавния служител*), Article 30.

<sup>170</sup> Healthy and Safe Work Conditions Act (HSWCA) (*Закон за здравословните и безопасни условия на труд*), latest amendments 5 December 2017, Article 16 (1.4).

<sup>171</sup> HSWCA, Article 25 (2.3). Those authorities are charged, *inter alia*, with monitoring and analysing employees' health status (HSWCA, Articles 25a (1.2) and (1.4)).

c) Definition of disability and non-discrimination protection

The definitions of disability under IPDA, both *disability* (general) and *long-term disability*, apply for all purposes under the law, including non-discrimination and reasonable accommodation.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Bulgaria, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field. PADA, Article 32, provides for reasonable accommodation in education. The limit of the duty is, the same as in employment, when “costs are unreasonably big and would seriously hinder” the educator.<sup>172</sup> IPDA also provides for accommodation duties for both schools and universities.<sup>173</sup> These duties are absolute (no disproportionate burden defence). Under IPDA, the Minister of Education and Science has a duty to provide children with disabilities with a supportive environment for their integrated education.<sup>174</sup> This is an absolute duty, too. A court has held that this duty will only be satisfied when there is supportive environment for integrated education in every kindergarten and school in the nation. Further, the Minister of Education and Science has a duty to create educational opportunities for children with disabilities who are not integrated in a common educational environment.<sup>175</sup> This duty, too, is absolute. It is not an accessibility duty but implicitly refers to measures directed at creating specific opportunities for particular individuals. Higher education institutions, too, have absolute accommodation duties.<sup>176</sup>

The Ordinance on Integrative Education<sup>177</sup> governing education for pupils with disabilities in mainstream and special schools defines “reasonable facilitations” (“разумни улеснения”) as “all kinds of necessary and appropriate modifications and adjustments that do not result in disproportionate or unjustified burdening of others, when those are necessary in every individual case to ensure a person with a disability the recognition or exercise of all rights and basic freedoms on an equal footing with all others within the meaning of the Convention on the Rights of Persons with Disabilities”.<sup>178</sup>

The term “reasonable facilitations” used above by the author of this report to translate the Ordinance’s language of “разумни улеснения” might not correspond to the original English-language legal term from whence, in all probability, the phrase “разумни улеснения” was adopted by the domestic legislator. The domestic legislator likely adopted the latter phrase from Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD), which uses “reasonable accommodation”, as well as “facilitating”. Accordingly, “разумни улеснения” (“reasonable facilitations”) is to be construed as “reasonable accommodation” and is to be expected to be applied by domestic bodies in line with “reasonable accommodation” under PADA, that is to say, as a concept derived from EU law.

That Ordinance provides for equal access to education through reasonable facilitations, as well as various forms of accessibility and other resources.<sup>179</sup> It defines reasonable facilitations as a means to secure accessibility of textbooks and other learning materials.<sup>180</sup> It specifically provides for reasonable facilitations for the taking of maturity exams.<sup>181</sup>

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<sup>172</sup> PADA, Article 32.

<sup>173</sup> IPDA, Article 17 and Article 20.

<sup>174</sup> IPDA, Article 17 (2).

<sup>175</sup> IPDA, Article 18.

<sup>176</sup> IPDA, Article 20.

<sup>177</sup> Entered into force 27 October 2017, see above, footnote No. 14.

<sup>178</sup> Ordinance on Integrative Education, Additional Provisions, § 1.8.

<sup>179</sup> Ordinance on Integrative Education (OIE), Article 102.

<sup>180</sup> OIE, Article 105.

<sup>181</sup> OIE, Article 107.

Under the Physical Education and Sports Act, schools have a duty to create conditions for adapted physical exercise and sports for students with special educational needs.<sup>182</sup> Persons with disabilities, in general, are entitled to the necessary conditions for various sports, although the law does not mention whose duty this is.<sup>183</sup> The Ministry of Youth and Sports has a duty to assist through targeted funding sportspeople with disabilities' preparation and participation at Olympic Games, and world and European championships.<sup>184</sup> That Ministry has a duty to assist the activities of sports organizations, related to persons with disabilities' adapted physical activity.<sup>185</sup>

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Bulgaria, failure to meet the duty of reasonable accommodation does not count as discrimination. Under PADA, unlike other forms of conduct, such as building or maintaining an inaccessible public architectural environment, it is not defined as a form of discrimination. There is no provision on such failure's relation to the bans on direct or indirect discrimination. This is also valid for failure to meet the various absolute accommodation duties under IPDA, the Labour Code, and the Healthy and Safe Work Conditions Act. Under PADA, there is a disproportionate burden defence for employers and educators, namely where the costs are "unreasonably big" or would "seriously hinder" the organisation. Under IPDA, employers have the same defence, but public bodies and universities have absolute duties, with no defence.

Under PADA, a failure to provide reasonable accommodation, as a breach of the law, is subject to fines in the amount of between EUR 125 (BGN 250) and EUR 1 000 (BGN 2 000) for a natural person, and between EUR 125 (BGN 250) and EUR 1 250 (BGN 2 500) for a legal person.

Under PADA, the shifting burden of proof would apply if the court or PADC agrees that a case against a failure to provide reasonable accommodation constitutes "proceedings for protection against discrimination" within the meaning of PADA, Article 9.

f) Duties to provide reasonable accommodation in respect of other grounds

In Bulgaria, there is a duty to provide reasonable accommodation in respect of one other ground in the public and the private sector.

*Religion/ belief*

Under PADA, Article 13 (2), employers have a duty to provide reasonable accommodation for religion/ belief in terms of working hours and rest days, where "this would not lead to excessive difficulties [...] and where [it is possible] [...] to compensate for the potential adverse consequences on the [business]".<sup>186</sup> There has been no litigation on record as yet based on this provision. It is unknown whether it is applied in practice or not.

g) Accessibility of services, buildings and infrastructure

In Bulgaria, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. PADA, Article 5, stipulates that building and maintaining an architectural environment that hinders persons with disabilities' access to public places is discrimination. This ban is absolute, with no defence. It has been relied on, successfully, in many discrimination cases (brought under

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<sup>182</sup> Physical Education and Sports Act (*Закон за физическото възпитание и спорта*), Article 21 (4).

<sup>183</sup> Physical Education and Sports Act, Article 33 (1).

<sup>184</sup> Physical Education and Sports Act, Article 33 (2).

<sup>185</sup> Physical Education and Sports Act, Article 33 (3).

<sup>186</sup> Under discrimination law, there is no definition of religion or belief in this or any other context.



PADA) before PADC.<sup>187</sup> Under IPDA, public bodies have absolute duties to create disability-accessible architectural environments, transportation services, and sports facilities.<sup>188</sup> Compensation for failures to do so has been sought under general tort law.

Under the Pre-School and School Education Act, additional support for personal development that pupils with special needs are entitled to<sup>189</sup> includes "the securing of an accessible architectural, general and specialized supportive environment, technical means, specialized equipment, didactic materials, methodologies and specialists".<sup>190</sup>

Under the Ordinance on Integrative Education (OIE), educational institutions shall provide conditions for equal access to education by securing accessibility of the physical and architectural environment, information and communications, learning programmes and content, technical means, specialized equipment, supportive methodologies and specialist human resources.<sup>191</sup> Under OIE, an accessible physical environment is defined by means of what it shall include,<sup>192</sup> and an accessible architectural environment – by means of minimum requirements.<sup>193</sup> There are also provisions on what accessibility of information and communications, and learning programmes and learning content, respectively, entail.<sup>194</sup>

Under the Spatial Planning Act, construction works shall be done in accordance with the basic requirements under Annex 1 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, including accessibility in use ("4. accessibility [...]").<sup>195</sup> Under that Act, the Minister of Regional and Urban Development singly or jointly with other competent ministers shall issue ordinances to fix the requirements for construction works, including for accessibility, including for persons with disabilities.<sup>196</sup> Executive bodies shall annually develop programs of measures to bring urbanized territory and existing individual buildings in accordance with accessibility requirements, and shall provide for funding for implementation.<sup>197</sup>

Ordinance No. 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements of an Accessible Environment for the Population, including People with Disabilities provides for extensive and detailed technical standards for accessibility of all urban environment and other areas.

Ordinance No. 33 of 3 November 1999 on Public Transportation of Passengers and Cargoes on the Territory of the Republic of Bulgaria provides for accessibility requirements for bus

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<sup>187</sup> For a recent example, see Supreme Administrative Court (SAC), Decision No. 158 of 8 January 2015 in case No. 7092/2014. SAC held that there was discrimination because the ramps installed did not afford independent access; access was limited and dependent on help; the ramps are immovable and could not be adjusted to different wheelchair types. Free admission for persons with disabilities into the establishment (a dolphinarium) had no relevance. SAC confirmed the penalty imposed on the company by PADC: EUR 250 (BGN 500), a minimum amount under the law. SAC also confirmed PADC's instruction for correctional measures: to "take the necessary action for constructing access for persons with disabilities to and inside the building".

<sup>188</sup> IPDA, Articles 33-34, 36, 38.

<sup>189</sup> Pre-School and School Education Act, Article 171 (1.7).

<sup>190</sup> Pre-School and School Education Act (PSSEA), Article 187 (1.3).

<sup>191</sup> Ordinance on Integrative Education (OIE), Article 102.

<sup>192</sup> OIE, Article 103.

<sup>193</sup> OIE, Article 104.

<sup>194</sup> OIE, Article 105-106.

<sup>195</sup> Spatial Planning Act (SPA) (*Закон за устройство на територията*), Article 169 (1.4).

<sup>196</sup> SPA, Article 169 (4).

<sup>197</sup> SPA, Article 169 (6).

stations.<sup>198</sup> The duty to secure and maintain accessibility during working hours is for bus station owners.<sup>199</sup>

A number of policies provide for accessibility. The *Strategic Plan of the Ministry of Labour and Social Policy for Implementation of the Government's Programme for Stable Development of the Republic of Bulgaria* for 2014 – 2018 features the financing of projects to secure an accessible architectural environment at cultural, historical and sports sites, as well as other integrative measures for the benefit of persons with disabilities.<sup>200</sup> The *Strategic Plan of the Ministry of Labour and Social Policy for Implementation of the Government's Programme for Governance of the Republic of Bulgaria* for 2017 – 2021 provides for the same measures.<sup>201</sup> The *National Lifelong Learning Strategy 2014-2020* provides for securing support and an appropriate architectural environment for students, postgraduates and PhD researchers with disabilities.<sup>202</sup>

The *National „Accessible and secure school” Programme 2016* provides for accessibility measures.<sup>203</sup> The 2016 – 2020 *National Strategy for Persons with Disabilities* does too.<sup>204</sup>

All types of transportation – land, air, and sea, are to be adapted. Students with special educational needs are to be provided with supportive teachers, special technical means and equipment, learning materials, etc. The Ministry of Labour and Social Policy *Employment Strategy* and the *National Strategy for the Child* provide for securing an accessible environment too.<sup>205</sup>

In Bulgaria, national law contains a general duty to provide accessibility by anticipation for people with disabilities. PADA expressly states that building and maintaining a public architectural environment that hinders people with disabilities' access constitutes discrimination.<sup>206</sup> IPDA provides for integration of people with disabilities in the workplace via an accessible architectural environment.<sup>207</sup> It absolutely mandates that free access to public buildings and infrastructure be provided to people with disabilities by eliminating architectural, transportation and communications barriers.<sup>208</sup> Under IPDA, state bodies and local government authorities are responsible for the planning of urbanized territory.<sup>209</sup> The Minister of Regional and Urban Development is responsible for adopting standards for accessible buildings and infrastructure.<sup>210</sup>

The Civil Servant Act binds authorities to secure free access for people with disabilities to administration buildings by bringing down architectural, transportation and other barriers.<sup>211</sup> The Spatial Planning Act provides that transportation infrastructure shall ensure “best conditions” for accessibility for people with disabilities.<sup>212</sup> It provides that city

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<sup>198</sup> Ordinance No. 33 of 3 November 1999 on Public Transportation of Passengers and Cargoes on the Territory of the Republic of Bulgaria, Article 54 (2.11-12).

<sup>199</sup> Ordinance No. 33 of 3 November 1999 on Public Transportation of Passengers and Cargoes on the Territory of the Republic of Bulgaria, Article 54 (3).

<sup>200</sup> Available at:

[https://www.mlsp.government.bg/ckfinder/userfiles/files/dokumenti/Strategichesko%20planirane/LAST\\_15\\_0311----STR-PLAN-DO%202018----VI.doc](https://www.mlsp.government.bg/ckfinder/userfiles/files/dokumenti/Strategichesko%20planirane/LAST_15_0311----STR-PLAN-DO%202018----VI.doc), p. 23.

<sup>201</sup> Available at:

[https://www.mlsp.government.bg/ckfinder/userfiles/files/dokumenti/Strategichesko%20planirane/LAST\\_19\\_092017--STR-PLAN-2017-%202021-1-EVMS-28\\_09\\_17.docx](https://www.mlsp.government.bg/ckfinder/userfiles/files/dokumenti/Strategichesko%20planirane/LAST_19_092017--STR-PLAN-2017-%202021-1-EVMS-28_09_17.docx), p. 29.

<sup>202</sup> Available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?Id=880>.

<sup>203</sup> Available at: <http://www.minedu.government.bg/?qo=page&pageId=381&subpageId=1315>.

<sup>204</sup> Available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bq-BG&Id=1048>.

<sup>205</sup> Available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bq-BG&Id=464>.

<sup>206</sup> PADA, Article 5.

<sup>207</sup> IPDA, Article 2.4 in conjunction with Article 4.4.

<sup>208</sup> IPDA, § 6, Transitional and Final Provisions.

<sup>209</sup> IPDA, Article 32.

<sup>210</sup> IPDA, Article 33.

<sup>211</sup> Civil Servant Act, Amendment Act of 2008, § 11, Final Provisions.

<sup>212</sup> SPA, Article 75 (3).

planning shall create conditions for environmental and technical infrastructural accessibility.<sup>213</sup>

Ordinance No. 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements for an Accessible Environment for the Population, including people with disabilities (Ordinance No. 4) sets the technical standards in considerable detail.

The Minister of Transportation is responsible for adopting standards for public transportation accessibility.<sup>214</sup> Municipalities are responsible for building accessible kindergartens and schools, and for providing accessible public transportation.<sup>215</sup> Under the Spatial Planning Act, construction oversight officials are responsible for appraising a new building's accessibility for people with disabilities.<sup>216</sup> The Minister of Regional and Urban Development is responsible for control over the implementation of this law, including accessibility standards for building.<sup>217</sup>

Under Ordinance No. 4, "accessible environment" is defined as "an environment in urbanised territories, buildings and equipment which every person of reduced mobility, with or without disabilities, can use freely and independently".<sup>218</sup> The Ordinance applies to all "urbanised territory, buildings and equipment", in particular "pedestrian spaces, crossroads and zebra crossings, stairs, lifts and wheelchair ramps, parking lots, public telephones and automats, seating places, post boxes, toilets, signs". All parties, private and public alike, are responsible to secure accessibility. Public institutions responsible to guarantee the implementation of this duty include the Minister of Regional and Urban Development, central and local government bodies, and municipality mayors.

The legislation provides for no grounds to justify a failure to ensure accessibility. The statutory duties are absolute. The case law explicitly and strongly acknowledges this. The civil court of last instance, the Supreme Court of Cassation, as well as the Supreme Administrative Court, responsible as a final instance for judicial review of PADC decisions, have produced since 2008 a strong line of consistent decisions holding the Government, local councils and private parties liable for discrimination against people with physical disabilities by hindering their access to urban environment and transportation.<sup>219</sup>

PADC too has taken a strong stance on accessibility. It has ruled that a lack of financial resources cannot be a justification for inaccessibility, nor can such a lack itself be justified because there was sufficient legal basis for the authorities to secure the necessary funds, and they had sufficient powers to do so.<sup>220</sup> PADC instructed the Minister of Finance and all municipality mayors to budget the necessary funds to eliminate architectural barriers.<sup>221</sup> It fined the Minister of State Administration and Administrative Reform with EUR 1 000 for failing to make accessible a polling station, with the same set of reasons.<sup>222</sup> It instructed the Minister of Justice to reorganise the building of the Sofia District Court, finding that its inaccessibility constituted discrimination.<sup>223</sup> PADC imposed a fine of EUR 500 on the Social Assistance Agency for keeping inaccessible its building, expressly holding that not only

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<sup>213</sup> SPA, Article 112 (4).

<sup>214</sup> IPDA, Article 34.

<sup>215</sup> IPDA, Article 38.

<sup>216</sup> SPA, Article 168.

<sup>217</sup> SPA, Article 220.

<sup>218</sup> Ordinance No. 4, Additional Provision, § 1.2. There are also definitions for several types of "accessible itinerary," "accessible entrance," "accessible website," and "accessible information map".

<sup>219</sup> Supreme Court of Cassation, Decision No. 1301 in civil case No. 5117/2007, Decision No. 556 in civil case No. 1514/2007, Decision No. 589 in civil case No. 1728/2007, Decision No. 1158 in civil case No. 5162/2007, and Decision No. 1286 in civil case No. 3371/2007. A recent example: Supreme Administrative Court, Decision No. 158 of 08 January 2015 in case No. 7092/2014.

<sup>220</sup> PADC, Decision No. 60 of 08 April 2008.

<sup>221</sup> PADC, Decision No. 60 of 08 April 2008.

<sup>222</sup> PADC, Decision No. 45 of 27 February 2008.

<sup>223</sup> PADC, Decision No. 39 of 25 February 2008.

proprietors of public buildings, but also organisations that use and manage such buildings are bound by the duty to make them accessible.<sup>224</sup> The body ordered the agency to stop its omission, stipulating a 3-months timeline for it to report on the action it has taken. PADC ruled that an enterprise providing public dolphin-watching services was bound by the law to secure accessibility so that persons with disabilities could gain unassisted access. The Supreme Administrative Court (SAC) upheld that decision.<sup>225</sup>

In 2016, in 5 cases, SAC held public bodies and private businesses liable for their inaccessibilities: a regional court (BGN 2000 (EUR 1000) compensation for non-pecuniary damages);<sup>226</sup> Parliament;<sup>227</sup> a Shell gas station;<sup>228</sup> the Minister of Justice due to his responsibility for a district court's accessibility;<sup>229</sup> the Minister of Education because of municipal school.<sup>230</sup> In all but the first case, SAC found direct discrimination. In the first one, the court did not specify.

In 2017, there were no such rulings.

#### h) Accessibility of public documents

There is no obligation under national law for public services to translate their documents in Braille. Under the Access to Public Information Act, persons with a visual impairment or hearing loss may request access to information in a form which suits their communication abilities.<sup>231</sup> The Bulgarian National Television, the Bulgarian National Radio and the Bulgarian Telegraph Agency have an obligation to provide information that is accessible to people with disabilities.<sup>232</sup> They have to include specialized shows for persons with disabilities in their programme schedules.<sup>233</sup>

An interpreter has to be appointed to participants in civil<sup>234</sup> and criminal<sup>235</sup> judicial proceedings who are deaf and unable to speak. Participants in administrative proceedings who are deaf, unable to speak or blind are also entitled to an interpreter.<sup>236</sup>

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<sup>224</sup> PADC, Decision No. 171 in case No. 158/2008.

<sup>225</sup> More information is available in Section 12.2 below.

<sup>226</sup> SAC Decision No. 5748 of 16 May 2016 in case No. 5495/2015.

<sup>227</sup> SAC Decision No. 4922 of 26 April 2016 in case No. 11652/2015. No compensation was awarded as the case was originally brought before PADC which has no power under the law to award compensation.

<sup>228</sup> SAC Decision No. 6956 of 9 June 2016 in case No. 6376/2015. No compensation was awarded as the case was originally brought before PADC which has no power under the law to award compensation.

<sup>229</sup> SAC Decision No. 9030 of 19 July 2016 in case No. 4992/2015. No compensation was awarded as the case was originally brought before PADC which has no power under the law to award compensation.

<sup>230</sup> SAC Decision No. 17 of 4 January 2016 in case No. 1076/2015. No compensation was awarded as the case was originally brought before PADC which has no power under the law to award compensation.

<sup>231</sup> Access to Public Information Act (*Закон за достъп до обществена информация*), Article 26 (4).

<sup>232</sup> IPDA, Article 39 (1).

<sup>233</sup> IPDA, Article 39 (2).

<sup>234</sup> Civil Procedural Code, Article 4 (3).

<sup>235</sup> Criminal Procedural Code (*Наказателно-процесуален кодекс*), Article 142 (2).

<sup>236</sup> Administrative Procedural Code (*Административнопроцесуален кодекс*), Article 14 (5).

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)**

In Bulgaria, there are no residence or citizenship/ nationality requirements for protection under the relevant national laws transposing the directives. Non-nationals within the territory, as well as nationals are entitled to protection from discrimination on any ground other than nationality.<sup>237</sup> Legal residence is irrelevant to entitlement to anti-discrimination protection; only factual being within the territory is a condition. Non-nationals, however, are protected from discrimination based on nationality only insofar as such discrimination has no basis in primary legislation.<sup>238</sup> Parliament may make law that discriminates against non-nationals, but executive bodies and private parties have no discretion to make such decisions. Parliament is free to adopt discriminatory laws based on nationality, with no constitutional limit to its discretion.<sup>239</sup>

##### **3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)**

###### **a) Protection against discrimination**

In Bulgaria, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination (PADA, Article 3 (1)). Legal entities and non-incorporated associations are protected, as well as individuals, where the former suffer discrimination on grounds of characteristics of their employees or members.<sup>240</sup> The courts and PADC have generally recognised legal persons' victim standing.<sup>241</sup> National law is in compliance with EU law.

###### **b) Liability for discrimination**

In Bulgaria, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. PADA makes no distinction between individuals and legal entities in terms of binding them by the ban on discrimination. The ban is expressly applicable *erga omnes*, including all legal persons.<sup>242</sup> Case law consistently recognised this until 2014. In 2014, the Supreme Administrative Court (SAC), acting as final instance of judicial review of PADC decisions, in two decisions held that a discrimination perpetrator could only be a natural person: a legal person – only exceptionally, in cases expressly provided for by law.<sup>243</sup> A public authority could not be a perpetrator – only an individual exercising an authority's competence.

This is contrary to PADA. Furthermore, it contradicts many rulings rendered by SAC in previous years, finding legal persons liable as discriminators.

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<sup>237</sup> PADA, Article 3 (1).

<sup>238</sup> PADA, Article 7 (1.1).

<sup>239</sup> Constitution, Article 26 (2).

<sup>240</sup> PADA, Article 3 (2).

<sup>241</sup> For instance, SAC Decision No. 5539 of 11 May 2016 in case No. 3732/2016 where SAC expressly refuted the lower court's reasoning that an NGO could not be a victim of discrimination, recognizing that legal persons' victim status derived directly from PADA.

<sup>242</sup> PADA, Article 6 (1).

<sup>243</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013 and Decision No. 15637 in case No. 1925/2014.

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

In Bulgaria, the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination.<sup>244</sup>

#### **b) Liability for discrimination**

In Bulgaria, the personal scope of anti-discrimination law covers private and public sector including public bodies for the purpose of liability for discrimination.<sup>245</sup> The prohibition is expressly *erga omnes*. However, in 2014, SAC initiated a line of case law in direct contravention to PADA: in two decisions SAC held that a public authority could not be a discrimination perpetrator, only an individual exercising an authority's competence.<sup>246</sup> This is contrary to PADA. PADA, as such, is in line with the directives but this new SAC interpretation is not. Furthermore, the latter contradicts many rulings rendered by SAC in previous years, finding public authorities liable as discriminators. In 2016, SAC went against that approach, ruling in a number of cases that public authorities were liable for discrimination.<sup>247</sup> However, whether that amounts to conclusive overturning of the problematic tendency, is not clear.

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Bulgaria, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, holding statutory office, for the five grounds.<sup>248</sup> The respective provisions include the general ban on discrimination which has universal scope<sup>249</sup> and certain specific bans. The specific provisions do not detail the material scope of the general ban on discrimination but instead provide for illustrative prohibitions in the fields relevant to this question (ex.: no discriminatory job requirements; no demands for information about protected grounds from job applicants; no refusals to hire, and no hiring under worse conditions; equal pay; equal opportunities for vocational training and career advancement; right to equal conditions for access to a profession or activity, and to equal opportunities for exercising a profession or activity and for growing in them). Those specific provisions constitute Title I of PADA: "Protection in the exercise of the right to labour".

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Bulgaria, national legislation prohibits discrimination in the following areas: conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.<sup>250</sup>

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<sup>244</sup> PADA, Article 3 (1).

<sup>245</sup> PADA, Article 6 (1).

<sup>246</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013 and Decision No. 15637 in case No. 1925/2014.

<sup>247</sup> Supreme Administrative Court, Decision No. 17 in case No. 1076/2015, Decision No. 9030 in case No. 4992/2015, Decision No. 4992 in case No. 11652/2015, and Decision No. 5748 in case No. 5495/2015.

<sup>248</sup> PADA, Article 6 (1) and Articles 12-28.

<sup>249</sup> The Supreme Administrative Court has recognised in its case law that the ban is, in that sense, 'absolute'. See, among other authorities, its Decision No. 7597 of 15 June 2017 in case No. 569/2016.

<sup>250</sup> PADA, Article 6 (1), Articles 12-28 and Article 37 (2).

Under PADA, the ban on discrimination on grounds of nationality is only conditional as there is an express exception to the effect that different treatment on grounds of nationality does not constitute discrimination where such treatment is provided for by law.<sup>251</sup> Under the Foreigners in the Republic of Bulgaria Act,<sup>252</sup> non-nationals have the same rights as nationals to the exception of rights that Bulgarian nationality is required.<sup>253</sup> Under the Foreigners in the Republic of Bulgaria Act, provisions on non-nationals' employment-related rights to stay in the country refer to the Labour Migration and Labour Mobility Act (LMLMA).<sup>254</sup> Under LMLMA, various categories of non-nationals have differing labour (employment, self-employment and occupation) rights. Specifically, third-country nationals (non-EU/non-EEA/ non-Swiss) are only entitled to access job positions that Bulgarian nationality is not required for.<sup>255</sup> LMLMA further differentiates between sub-categories in the 'third-country nationals' category. EU/EEA/Swiss nationals as a separate category have enhanced labour rights compared to third-country nationals, equal in many aspects to nationals' rights, yet still lack labour rights that require Bulgarian nationality.<sup>256</sup> The distinction between EU/EEA/Swiss nationals and third-country nationals, therefore, is that while the same principle applies to both these categories (job access when Bulgarian nationality is not required), in fact provisions in a number of instances require Bulgarian nationality *or* EU/EEA/Swiss nationality, thus only excluding third-country nationals (but not EU/EEA/Swiss nationals).

In addition, under various other laws governing professions (the Bar Act,<sup>257</sup> the Notary Public and Notary Activities Act),<sup>258</sup> as well as civil service under the Civil Servant Act,<sup>259</sup> only EU/ EEA/ Swiss nationals, as well as Bulgarian nationals, have access to occupation rights. Civil service under the Judiciary Act, including as jury member, is only open to Bulgarian nationals.<sup>260</sup>

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

In Bulgaria, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment.<sup>261</sup>

#### **3.2.3.1 Occupational pensions constituting part of pay**

Under PADA, discrimination is expressly universally banned, with respect to all legal rights and legitimate interests, implicitly including occupational pensions.<sup>262</sup> There is, however, no provision or case law that occupational pensions are part of "pay" or "working conditions". They are covered under PADA irrespective of that.

<sup>251</sup> PADA, Article 7 (1.1).

<sup>252</sup> Adopted 23 December 1998, last amendments 5 December 2017.

<sup>253</sup> Foreigners in the Republic of Bulgaria Act, Article 3 (1).

<sup>254</sup> Adopted 26 April 2016, entry into force 21 May 2016, last amendments 5 December 2017.

<sup>255</sup> LMLMA, Article 7 (1).

<sup>256</sup> LMLMA, Article 49 (1).

<sup>257</sup> Article 4 (1).

<sup>258</sup> Article 8 (1).

<sup>259</sup> Article 7 (1).

<sup>260</sup> Article 67, 162.

<sup>261</sup> PADA, Article 6 (1). Article 6 (1) does not list any specific fields of application. It does not mention dismissals or pay. It is a general norm providing for a universal scope, implicitly covering any specific field. It reads: "The ban on discrimination applies to all persons in the exercise and the defence of the rights and freedoms provided for under the Constitution and the laws of the Republic of Bulgaria."

<sup>262</sup> PADA, Article 6 (1) and Articles 12-28.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Bulgaria, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.<sup>263</sup>

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Bulgaria, national legislation prohibits discrimination in the following areas: membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.<sup>264</sup>

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Bulgaria, national legislation prohibits discrimination in the following areas: social protection, including social security and healthcare as formulated in the Racial Equality Directive.<sup>265</sup> All five grounds are covered.

#### **3.2.6.1 Article 3.3 exception (Directive 2000/78)**

PADA transposes the exception in Article 3 (3) of Directive 2000/78 with respect to age, and no other ground, as concerns eligibility for pension ages only.<sup>266</sup>

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

In Bulgaria, national legislation implicitly prohibits discrimination in the following areas: social advantages as formulated in the Racial Equality Directive.<sup>267</sup> All five grounds are covered.

In Bulgaria, the lack of definition of social advantages does not raise problems.

### **3.2.8 Education (Article 3(1)(g) Directive 2000/43)**

In Bulgaria, national legislation prohibits discrimination in the following areas: education as formulated in the Racial Equality Directive.<sup>268</sup> All five grounds are covered. The scope of protection under PADA is universal. Discrimination is banned with regard to all rights and freedoms (Article 6 (1)). Therefore, any discriminatory treatment in school would be covered, including educational content.

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<sup>263</sup> PADA, Article 6 (1) and Articles 29-35. Article 6 (1) is a general provision, implicitly covering these fields. Articles 29-35 do not list specific fields of application but provide for specific bans (bans on particular conduct) in the fields of education and training.

<sup>264</sup> PADA, Article 6 (1) and Article 36.

<sup>265</sup> PADA, Article 6 (1).

<sup>266</sup> PADA, Article 7 (1.8).

<sup>267</sup> PADA, Article 6 (1). Article 6 (1) is a general norm providing for a universal scope, implicitly covering any specific field, including social advantages. It reads: "The ban on discrimination applies to all persons in the exercise and the defence of the rights and freedoms provided for under the Constitution and the laws of the Republic of Bulgaria." There is no case law on social advantages. There has never been a decision, by the courts or the equality body, as far as I am aware, to deny the universal, all-encompassing scope of PADA.

<sup>268</sup> PADA, Article 6 (1) and Articles 29-35. Article 6 (1) is a general provision, implicitly covering these fields. Articles 29-35 do not list specific fields of application but provide for specific bans (bans on particular conduct) in the fields of education and training.



In addition, under the Pre-School and School Education Act, everyone shall have a right to education, and integrative education is an integral part of the right to education.<sup>269</sup> Pre-school and school education shall be free, including for asylum-seekers and refugees.<sup>270</sup> Compulsory pre-school and school education shall be free, including for irregular and undocumented migrants.<sup>271</sup> All children of compulsory pre-schooling and schooling age<sup>272</sup> are entitled to free pre-schooling and schooling regardless of their nationality or document status.

Equal access to quality education and integration of every child, as well as equal treatment and non-discrimination are among the principles of education.<sup>273</sup>

Extra language tuition shall be provided to all migrant children of compulsory pre-schooling and schooling age, as well as to asylum-seekers and refugee/ protection holders beyond the compulsory age.<sup>274</sup> That does not result in segregation as language classes are outside of the curriculum.<sup>275</sup> In practice, access to education is hindered for unaccompanied migrant children.<sup>276</sup> In addition, migrant children under 7 years of age and over 14 years reportedly also face difficulties accessing education while living in State Agency for Refugees facilities for the duration of asylum proceedings.<sup>277</sup> Reportedly, not all parents wish to enrol their children in school/ kindergarten due to fears, no busing being available, and financial constraints.<sup>278</sup> There are no clear statistics available on the share of migrant children who are enrolled in school/ pre-school. Reportedly, the numbers of enrolled children are increasing.<sup>279</sup>

In 2017, the Government adopted the *Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection*,<sup>280</sup> providing, inter alia, for access to education – securing pre-school and school education for children, and equal access to education for persons above 18, as well as children.<sup>281</sup> Under the ordinance, integration agreements shall be concluded locally between a foreigner and the mayor, on the mayor's initiative, for the duration of a year.<sup>282</sup> According to NGO reports, this "Integration Decree" "remained futile and out of use throughout [...] 2017, as none of [the] 265 municipalities applied for funding in order to commence an integration process with any of the individuals granted international protection in Bulgaria. [T]he situation remained the same without any actual integration activities planned, funded or available to recognised refugees or subsidiary protection holders."<sup>283</sup>

<sup>269</sup> Pre-School and School Education Act (PSSEA), adopted 13 October 2015, entered into force 1 August 2016, last amendments 12 December 2017, Article 7 (1-2).

<sup>270</sup> PSSEA, Article 9 (1-3).

<sup>271</sup> PSSEA, Article 9 (1-3).

<sup>272</sup> Between 5 and 16 years of age (Article 8 PSSEA).

<sup>273</sup> PSSEA, Article 3 (2.3-4).

<sup>274</sup> PSSEA, Article 17. Ordinance No. 4 of 11 August 2016 on Mastering the Standard Bulgarian Language, entry into force 1 September 2016, Articles 4 (3) and 10 (1.3-4).

<sup>275</sup> Ordinance No. 4 of 11 August 2016 on Mastering the Standard Bulgarian Language, Article 12 (1).

<sup>276</sup> See Bulgarian Helsinki Committee, Annual Report for 2016, p. 24, "Recommendation No. 9", available at: [http://bghelsinki.org/media/uploads/documents/reports/special/wp\\_annual\\_rsd\\_monitoring\\_report\\_bg.pdf](http://bghelsinki.org/media/uploads/documents/reports/special/wp_annual_rsd_monitoring_report_bg.pdf).

<sup>277</sup> See UNHCR – Bulgaria, p. 14-15, at: <http://www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf>.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

<sup>280</sup> See Council of Ministers Decree No. 144 of 19 July 2017 at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=116399>.

<sup>281</sup> Article 6 (1-2).

<sup>282</sup> Article 3 (1-2).

<sup>283</sup> Asylum Information Database (AIDA), Country Report: Bulgaria, 2017 Update, p. 12, at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_bg\\_2017update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2017update.pdf).

Under the Integration Ordinance, the Minister of Education shall fix the terms and procedure for enrolment of child international protection seekers/ holders in Bulgarian language classes, preparatory groups for pre-school education and in school.<sup>284</sup>

In 2017, the Minister of Education adopted the *Ordinance on the Terms and Procedure for Admission and Training of Persons Seeking or Having Received International Protection*.<sup>285</sup>

There are two government-adopted general non-legal documents relevant to asylum seekers and migrants: National Strategy for Integration of Asylum Receivers 2014-2020<sup>286</sup> (concerning refugees); National Strategy in the Field of Migration, Asylum and Integration 2015-2020.<sup>287</sup>

a) Pupils with disabilities

While under the legislation integrative/ inclusive education is the rule,<sup>288</sup> and declared an integral part of the right to education,<sup>289</sup> in practice, integration of all pupils with disabilities is yet to be achieved. NGOs monitoring the process of educational integration have observed that: funding and methodological support for integration are inadequate, and measurable indicators for progress are lacking, with few schools and few children included in integrative change in practice;<sup>290</sup> 17 % of children living in residential care in community centres are not included in any form of schooling, while 32 % of children living in residential care in community centres are schooled in classes within those centres (outside of schools), and most of the children living in residential care in community centres who actually visit a school, are enrolled in a form of special (not mainstream) school;<sup>291</sup> not all kindergartens and schools are physically accessible, and no data is available on their numbers as of 2017.<sup>292</sup>

Furthermore, under the legislation itself, children with sensory (hearing or sight) impairments are channelled into special schools for their category.<sup>293</sup> As for children with other disabilities, while under the law, kindergartens and schools are under a duty to accept them,<sup>294</sup> and they may not be segregated in classes/ groups,<sup>295</sup> they still may be referred, on parental application, to separate special schools (centres for special educational support) or to special groups based on an assessment of their special needs.<sup>296</sup> While the law stipulates that this is to be done "as an exception, when educational objectives cannot be achieved through another form of support", this language is broad and there is no legal definition of what it means for educational objectives to not be able to be achieved through other support. It is unclear whether mainstream education environmental deficiencies (inaccessibility or insufficient human and technical resources) could be construed as a legitimate reason why educational objectives could not be realised other than in a special

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<sup>284</sup> Article 21.

<sup>285</sup> Available at: [http://www.mon.bg/upload/4160/nrdb3\\_2017\\_obuchenie.pdf](http://www.mon.bg/upload/4160/nrdb3_2017_obuchenie.pdf) (in BG).

<sup>286</sup> Available at: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1327> (in BG).

<sup>287</sup> Available at: [www.aref.government.bg/docs/strat.doc](http://www.aref.government.bg/docs/strat.doc) (in BG).

<sup>288</sup> The Pre-School and School Education Act (*Закон за предучилищното и училищното образование*), entry into force 1 August 2016, latest amendments 12 December 2017, and secondary legislation – the Ordinance on Integrative Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017.

<sup>289</sup> Pre-School and School Education Act, Article 7 (2).

<sup>290</sup> National Network for Children, "Notebook" 2017, available at: [http://nmd.bg/wp-content/uploads/2017/05/A4\\_bejejn2017\\_web.pdf](http://nmd.bg/wp-content/uploads/2017/05/A4_bejejn2017_web.pdf) (in BG), p. 83-84.

<sup>291</sup> Lumos Foundation, An assessment of deinstitutionalization results for children and young adults transferred into residential care centres in the community, available at (in BG): [https://www.ngobg.info/bg/documents/7154/1674lumusbulgarianoutcomesreport\\_bul\\_web\\_14jun16.pdf](https://www.ngobg.info/bg/documents/7154/1674lumusbulgarianoutcomesreport_bul_web_14jun16.pdf), p. 32.

<sup>292</sup> Shadow report under the CRPD by the Bulgarian Helsinki Committee, May 2017, available at (in BG): [http://bghelsinki.org/media/uploads/special/2017-int\\_crp\\_d\\_ico\\_bgr\\_27646\\_e.pdf](http://bghelsinki.org/media/uploads/special/2017-int_crp_d_ico_bgr_27646_e.pdf), p. 66, citing official data for 2013 (91 accessible schools).

<sup>293</sup> Pre-School and School Education Act, Article 44 (1.1).

<sup>294</sup> Pre-School and School Education Act, Article 192 (1).

<sup>295</sup> Pre-School and School Education Act, Article 99 (5).

<sup>296</sup> Pre-School and School Education Act, Article 145 (5).

school. Furthermore, under the law, there are no procedural guarantees for informed parental choice in terms of making an application for referring a child to a special school. According to the author of this report, it would be possible for marginalised, indigent parents to be put under pressure by educators/ intellectual health specialists/ officials to apply for special school referral on grounds that “there is no other way”.

No public data is available on the numbers of children separated in special schools, excluded from any schooling, or integrated in schools and kindergartens. According to NGO estimates, between 2 032 and 2 722 children with disabilities are schooled at special centres, while between 10 000 and 14 000 are integrated in mainstream schooling, using resource support.<sup>297</sup> A large share of children are said to be excluded from any schooling – some 8 500 children with disabilities, including those younger than pre-school age (0-5 years), are not reported as being schooled either in special, or in mainstream schools.<sup>298</sup>

#### b) Trends and patterns regarding Roma pupils

In Bulgaria, there are specific patterns existing in education regarding Roma pupils, such as segregation. Roma predominantly live in segregated areas in severely substandard (inhuman) conditions, and Roma children predominantly study in schools located in such areas. Those schools are predominantly Roma, i.e. segregated, and seriously substandard. Other patterns of educational exclusion/ segregation of Roma include:

1. children at home, or in the street with no access to school at all;
2. children in separate classrooms in mainstream schools;
3. children in remedial schools (disproportionate representation);
4. children in schools for juvenile delinquents (disproportionate representation).

PADA bans racial segregation as a form of discrimination (Article 5). It defines it, however, in a way that is not compatible with European law because the definition explicitly requires the state of separation to be ‘forced’.<sup>299</sup> It thus implies that segregation may be chosen, i.e. that segregated persons may waive their right not to be discriminated against, including not to be segregated on racial grounds. Yet, the European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination in this context is possible because that would conflict with an important public interest.<sup>300</sup>

Under the Pre-School and School Education Act, kindergartens and schools may not segregate children of “a different” ethnicity in separate groups/ classes.<sup>301</sup> However, there is no ban under that act on segregating children in separate kindergartens/ schools.

In a few cases brought to court to challenge all-Romani schools,<sup>302</sup> the ‘forced’ element in the definition has proved an obstacle to effective protection. In one case, the appeals court explicitly confirmed that there was separation on ethnic grounds but found that it was not ‘forced’ because it was “not a consequence of factors outside of the students’ will and did not occur against their will – it did not result from legislation or administrative decision”.<sup>303</sup> It however found that the students suffered indirect discrimination because the school curricula and processes did not take account of their ethnic and linguistic differences. In

<sup>297</sup> Shadow report under the CRPD by the Bulgarian Helsinki Committee, May 2017, available at (in BG): [http://bghelsinki.org/media/uploads/special/2017-int\\_crpdc\\_ico\\_bgr\\_27646\\_e.pdf](http://bghelsinki.org/media/uploads/special/2017-int_crpdc_ico_bgr_27646_e.pdf), p. 63, 65.

<sup>298</sup> Ibid, p. 66.

<sup>299</sup> PADA, Additional Provision, § 1.6.

<sup>300</sup> For instance, European Court of Human Rights, *D.H. v. Czech Republic*, judgment of 13 November 2007; European Court of Human Rights, *Sampanis v. Greece*, judgment of 05.06.2008; European Court of Human Rights, *Orsus v. Croatia*, judgment of 16 March 2010 (GC).

<sup>301</sup> Pre-School and School Education Act, Article 62 (4) and Article 99 (4) and (6).

<sup>302</sup> In one case, segregation of *Turkish* children in separate classes was successfully challenged before the equality authority too (PADC, decision No 91 of 08 November 2007 in case No 28/2007).

<sup>303</sup> Sofia City Court, Decision of 27 February 2007, civil case No 3139 of 2005. The Supreme Court of Cassation, the final instance, confirmed this decision: Decision No 723 of 01 August 2008, civil case No 6402 of 2007.

two other cases the 'forced' hurdle prevented any protection.<sup>304</sup> In a case concerning the disproportionate representation of Roma children in special schools, the equality body instructed the Minister of Education to take measures to stop the admission of healthy children in such schools.<sup>305</sup>

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)**

In Bulgaria, national legislation prohibits discrimination in the following areas: access to and supply of goods and services as formulated in the Racial Equality Directive.<sup>306</sup> This is ensured by both the general, all-encompassing ban on discrimination, and by the specific provision of Article 37 banning any refusal to provide goods or services, as well as any provision of goods and services of lesser quality or under worse conditions. All five grounds are covered. It is not, however, clear whether this would extend to an obligation (breach of which is discrimination) to provide (design/ manufacture) goods which are easily usable by people with disabilities. More likely, the courts would not accept that this obligation covers goods that are not existing (that need yet to be manufactured/ designed).

#### **3.2.9.1 Distinction between goods and services available publicly or privately**

In Bulgaria, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association).<sup>307</sup> In one case in the past, however, without formally making such a distinction, the Supreme Administrative Court found that higher prices for non-members imposed by an association of visually impaired persons for access to phonographic library services did not constitute discrimination.<sup>308</sup>

In 2015, CJEU gave a preliminary ruling in a case concerning discriminatory provision of services to inhabitants of a Roma residential area. Roma, as well as non-Roma were denied access to their electricity meters as the electricity distribution undertaking installed the electricity meters for all consumers in that district at a height of 6-7m. In the non-Roma districts, meters are placed at a height of 1.70m, available for monitoring by consumers. According to the company, that difference in treatment was justified by frequent tampering with, and damage to meters, and by numerous unlawful connections to the network by the Roma. The equality body found that a non-Roma resident was discriminated against compared with customers whose meters are accessible. On appeal, the court asked CJEU whether the contested practice amounted to discrimination on grounds of ethnic origin. CJEU confirmed that.<sup>309</sup> To follow up on this ruling, Parliament adopted new definitions of indirect discrimination and less favourable treatment in order to clarify that 1) discrimination was outlawed with respect to all forms of disadvantage, and not exclusively

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<sup>304</sup> Blagoevgrad Regional Court, Decision No 139 of 01 December 2005 in case 1154/2004; Sofia Regional Court, Decision of 16 December 2005 in case No 871/2005 (both confirming negative trial court rulings on appeal). The first case was brought by Roma students studying in exclusively or predominantly Romani classes in school. The courts in effect found that the authorities had done nothing to create this situation and could do nothing about it because the right to, choice of school (of non-Roma parents/ students) was absolute and could not be interfered with. The second case was brought by the European Roma Rights Centre alleging that an all-Roma school was segregated (as well as substandard and ill-adapted to deal with the students' language differences). The courts found that the authorities did not 'force' any of the students to study in that particular school, therefore, there was no segregation, or any other breach of equality law.

<sup>305</sup> PADC, Decision No 80 of 16 October 2007. The rationale would be that mistakes are made when officials decide for themselves what the ethnicity of other people is without consulting them and, no less important, that it is disrespectful to assume a determining role with respect to another's identity rather than leave this to them.

<sup>306</sup> PADA, Article 6 (1) and Article 37.

<sup>307</sup> PADA, Article 6 (1) and Article 37.

<sup>308</sup> Supreme Administrative Court, Decision No. 451 of 14 January 2008 in case No. 10322/2007.

<sup>309</sup> Act to Amend and Complement the Protection Against Discrimination Act (Закон за изменение и допълнение на Закона за защита от дискриминация), adopted 22 December 2016. Available at: <http://www.parliament.bg/bg/laws/ID/42259>.

regarding legal rights and legitimate interests; and 2) that discrimination by association was expressly banned.<sup>310</sup>

### 3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Bulgaria, national legislation prohibits discrimination in the following areas: housing as formulated in the Racial Equality Directive.<sup>311</sup> The provision is general, implicitly including housing. That covers all five grounds.

There is no provision on succession of tenancy rights for same-sex couples. Heterosexual unmarried couples do not benefit from succession of tenancy rights. Same-sex couples would not either.

In 2017, the Government adopted the *Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection*,<sup>312</sup> providing, inter alia, for access to housing – securing consultation services on access to housing for refugees and subsidiary protection holders, and implementing mechanisms to include refugees' and subsidiary protection holders' integration in housing policies.<sup>313</sup> Refugees and subsidiary protection holders are entitled to using a social service consisting of housing in a Centre for Temporary Accommodation for up to 3 months.<sup>314</sup> Under the ordinance, integration agreements shall be concluded locally between a foreigner and the mayor, on the mayor's initiative, for the duration of a year.<sup>315</sup> According to NGO reports, this "Integration Decree" "remained futile and out of use throughout [...] 2017, as none of [the] 265 municipalities applied for funding in order to commence an integration process with any of the individuals granted international protection in Bulgaria. [T]he situation remained the same without any actual integration activities planned, funded or available to recognised refugees or subsidiary protection holders."<sup>316</sup>

In practice, protection holders face serious difficulties, including ones due to various systemic obstacles, in finding accommodation. They have to leave the State Agency of Refugees (SAR) facilities where they reside for the duration of SAR proceedings within 14 days as of receiving protected status. Finding accommodation on the market within such a short time-frame is difficult for financial reasons. Landlords typically require advance payment for one to three months. Protection holders cannot find employment before securing a place to stay as they need an identification document (ID) for employment, and an ID may only be issued on the basis of a registered address. A registered address is also necessary in order to register with the labour bureau (for the unemployed), and to apply for social services and assistance. Employment often requires having a bank account, and for opening one, an ID is required.<sup>317</sup> In addition, based on anecdotal evidence, protection holders face race and religious discrimination by landlords. Landlords also tend to discriminate against families with many children.<sup>318</sup> As a result, the most vulnerable protection holders face homelessness risks, with no sustainable solution having been identified.<sup>319</sup>

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<sup>310</sup> New legislation available at: <http://www.parliament.bg/bg/bills/ID/42259>.

<sup>311</sup> PADA, Article 6 (1).

<sup>312</sup> See Council of Ministers Decree No. 144 of 19 July 2017 at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=116399>.

<sup>313</sup> Article 9 (1-2).

<sup>314</sup> Article 11.4.

<sup>315</sup> Article 3 (1-2).

<sup>316</sup> Asylum Information Database (AIDA), Country Report: Bulgaria, 2017 Update, p. 12, at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_bg\\_2017update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2017update.pdf).

<sup>317</sup> See Caritas Bulgaria (2017), p. 28-30 (in BG), at: [https://caritas.bg/Documents/Izdania/Integration-manual\\_2017.pdf?x55678](https://caritas.bg/Documents/Izdania/Integration-manual_2017.pdf?x55678).

<sup>318</sup> See UNHCR-Bulgaria (2016), p. 12, at: <http://www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf>.

<sup>319</sup> Ibid.



Under the law, SAR may authorize protection holders' extended stay in SAR facilities for 6 months or less, depending on availability, where financial issues impede vulnerable persons in finding accommodation.<sup>320</sup>

For the duration of asylum proceedings, asylum-seekers are entitled to accommodation at SAR facilities.<sup>321</sup>

There are two government-adopted general non-legal documents relevant to asylum seekers and migrants: National Strategy for Integration of Asylum Receivers 2014-2020<sup>322</sup> (concerning refugees); National Strategy in the Field of Migration, Asylum and Integration 2015-2020.<sup>323</sup> The former one provides for monies to be accessible to municipalities that apply to host refugees, providing housing. The latter one merely state, that housing is a priority area, without providing for any specific measure.

### 3.2.10.1 Trends and patterns regarding housing segregation of Roma

In Bulgaria, there are patterns of housing segregation and discrimination against the Roma. The majority of Roma live in ghettos in dire conditions in substandard housing, some of it ramshackle, with very limited access to basic infrastructure, security of tenure or essential services, such as public transportation, emergency medical aid, garbage collection, policing, and, for some, even electricity and water supply.

The housing situation of Roma is a clear case of discrimination. In many places, the local authorities have for decades ignored their housing and infrastructure needs, investing nothing in development of residential areas populated by Roma. In many places, the authorities have consistently refused to include Roma residential areas in urban planning and to regulate them. Forced evictions and the lack of social protection for the people rendered homeless by them have further compounded this situation. In 2012, the European Court of Human Rights rendered a decision against Bulgaria, in *Yordanova and Others v. Bulgaria*, a case of an impending collective forced eviction threatening an entire Romani community.<sup>324</sup> The Court held that there was a breach of the rights to home and to private and family life, because the eviction would render the persons homeless, which the authorities failed to consider. They also failed to consider the fact of their own contribution, over decades, for the situation. The Court ordered the authorities to change the law by introducing a proportionality test for such eviction decisions and forbade them to reconsider the impugned eviction decision before so amending the law. The judgment has not been implemented. Its implementation requires a change in a number of domestic acts providing grounds for evictions or demolition of unlawful buildings, in order to place all relevant authorities under a duty to consider the affected persons' individual circumstances, including their special vulnerabilities, as well as the authorities' failures to deal with the situation sooner, and to provide alternative accommodation where warranted so as not to reduce dependent persons to homelessness.

Other relevant rulings by supranational authorities include:

- *Aydarov and Others v. Bulgaria*, European Court of Human Rights, application No 33586/15, communicated to the Government on 27 April 2016. The case concerned the threatened demolition of the houses in which the applicants, Roma, live. To stop the impending eviction, the applicants requested interim relief under Article 39 of the Convention. The Court required information from the Government regarding the consequences of the eviction, and the domestic authorities decided to postpone it.

<sup>320</sup> See Caritas Bulgaria (2017), p. 28-30 (in BG), at: [https://caritas.bg/Documents/Izdania/Integration-manual\\_2017.pdf?x55678](https://caritas.bg/Documents/Izdania/Integration-manual_2017.pdf?x55678).

<sup>321</sup> Asylum and Refugees Act, Article 29.

<sup>322</sup> Available at: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1327> (in BG).

<sup>323</sup> Available at: [www.aref.government.bg/docs/strat.doc](http://www.aref.government.bg/docs/strat.doc) (in BG).

<sup>324</sup> European Court of Human Rights, Application No.25446/06.

- *Ivanova and Cherkezov v. Bulgaria*, European Court of Human Rights, application No 46577/15, judgment of 21 April 2016. The applicants are not Roma. The case concerned the threatened demolition of the house in which they live. The Court held that there would be a violation of Article 8 of the Convention if the order for the demolition of the house were to be enforced without a proper review of its proportionality in the light of the applicants' personal circumstances.
- *Naidenova and Others v. Bulgaria*, UN Human Rights Committee, Communication No. 2073/2011, Views adopted by the Committee at its 106th session (15 October–2 November 2012). The case concerned the threatened demolition of the houses in which the applicants, Roma, live. The Committee held that, in the light of the long history of the applicants' homes, by not giving due consideration to the risk of the applicants' becoming homeless, where satisfactory replacement housing is not immediately available to them, the State violate Article 17 of the Covenant, if it enforced the eviction order.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Bulgaria, national legislation provides for an exception for genuine and determining occupational requirements.<sup>325</sup> That is valid for all grounds. The language is: "The following shall not constitute discrimination: [...] different treatment of persons based on a characteristic related to [protected] grounds [...] where, by reason of the nature of a particular occupation or activity, or of the conditions it is carried out in, such a characteristic constitutes an essential and determining occupational requirement, the aim is legitimate and the requirement does not exceed what is necessary to accomplish it [...]".

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In Bulgaria, national law provides for an exception for employers with an ethos based on religion or belief.<sup>326</sup> The exception is for "different treatment of persons on grounds of religion, faith or gender with respect to an occupation carried out in religious institutions or organisations where, by reason of the nature of the occupation, or of the conditions it is carried out in, religion, faith or gender constitutes an essential and determining professional requirement in view of the nature of the institution or organisation, where the aim is legitimate and the requirement does not exceed the necessary to accomplish it; [...]". There is an inconsistency in wording between the Directive and PADA: rather than "genuine, legitimate and justified", under PADA the occupational requirement is "genuine and determining". However, that may not be material in practice. PADA also exempts "different treatment of persons on grounds of religion/ faith [...] in religious education or training, including training or education for the purposes of carrying out an occupation in a religious-ethos institution".<sup>327</sup> This means that religious discrimination is allowed in access to religious education/ training with no proportionality required. There is no wording in the law underlining that this exception should not lead to discrimination on grounds other than religion.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Bulgaria, there is case law relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. PADC and the Supreme Administrative Court have explicitly ruled that PADC was not competent to hear disputes over alleged discrimination by religious institutions because the State could not interfere in the latter's internal affairs, and, therefore, could not provide protection for any civil rights, including equality, vis-à-vis them.<sup>328</sup> The case concerned the dominant, majority church, the Bulgarian Orthodox Church and the alleged discrimination was on grounds of Roma ethnicity. It has not been reproduced with respect to minority faiths. No information is available whether any party has made an application to the European Court of Human Rights about this. There can be no plans to do that in the future as the deadlines are long past.

### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Bulgaria, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination. PADA makes no such exception. However, the special law governing the professional army provides for age and "ability" (both physical

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<sup>325</sup> PADA, Article 7 (1.2).

<sup>326</sup> PADA, Article 7 (1.3).

<sup>327</sup> PADA, Article 7 (1.4).

<sup>328</sup> PADC, Decision No. 146 of 24 June 2013 in case No. 78/2012.



and psychological) requirements for access to recruitment.<sup>329</sup> Both types of “ability” are required to be medically certified.<sup>330</sup> This legislation and PADA are in conflict, which in practice arguably renders the age and disability discrimination ban under PADA void in relation to employment in the army.

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Bulgaria, national law includes exceptions relating to difference of treatment based on nationality. In principle, PADA treats nationality as a protected ground, banning all forms of discrimination based on it in all fields of life.<sup>331</sup> It makes a significant exception, however, for differential treatment based on nationality provided for under primary legislation.<sup>332</sup> Therefore, executive and local government bodies, as well as private parties, are not allowed to treat non-nationals differently based on their nationality, unless Parliament has authorised such treatment by law. Under PADA, both nationality and a lack of any nationality are included in the concept of nationality as a protected ground.<sup>333</sup>

In Bulgaria, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law.<sup>334</sup>

##### **b) Relationship between nationality and ‘race or ethnic origin’**

The law does not stipulate any relationship between nationality and race/ ethnicity, either in terms of indirect discrimination, or otherwise. No case law has discussed any overlap between nationality and race/ ethnic discrimination.<sup>335</sup>

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

##### **a) Benefits for married employees**

In Bulgaria, it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married. PADA bans all discrimination based on family status.<sup>336</sup> Family status covers marital status.

In 2008, there was a debate on legalizing same-sex families. This took place within the framework of public discussions on a draft new family Code which proposed to govern heterosexual de facto families. The debate on legalising homosexual families as well was opened up by LGBT activists in the media, and not by MPs or parliamentary parties. Opponents took the view that it was not in the interests of children to be raised in same-sex families; that homosexual couples could not have children of their own; that this would undermine marriage as a union between a man and a woman with a view to reproduction, based on differing roles; that it would pave the way to legalising polygamy and incest; that homosexual relationships were not traditional, and recognising them would mean giving a social group special rights based on their sexual conduct. The equality body issued a recommendation for the draft Family Code to include same-sex couples in the

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<sup>329</sup> *Defence and Armed Forces of the Republic of Bulgaria Act* (Закон за отбраната и въоръжените сили на Република България), latest amendments 28 December 2017, Article 141 (1).

<sup>330</sup> *Defence and Armed Forces of the Republic of Bulgaria Act*, Article 141 (2-3).

<sup>331</sup> PADA, Article 4 (1).

<sup>332</sup> PADA, Article 7 (1.1).

<sup>333</sup> PADA, Article 7 (1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

<sup>334</sup> PADA, Article 4 (1).

<sup>335</sup> In 2003, when the Directives were transposed via the PADA, there were a number of legal provisions differentiating on grounds of nationality. There still are. Those have never been reviewed to reveal whether they might be indirectly discriminatory against racial groups.

<sup>336</sup> PADA, Article 4 (1).

definition of de facto families. Eventually, the draft was adopted without any provision on de facto marriage. The debate died out and has not been reopened since. There has been no further political or academic debate on the need of adoption of law on same-sex unions. No strategic litigation in that respect is on record.

b) Benefits for employees with opposite-sex partners

In Bulgaria, it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners.<sup>337</sup>

#### **4.6 Health and safety (Article 7(2) Directive 2000/78)**

a) Exceptions in relation to disability and health/safety

In Bulgaria, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). There are no such exceptions for other grounds either.

PADA provides for none. However, under the Healthy and Safe Work Conditions Act, employers have a duty to assign to their employees only tasks that are compatible with their capabilities,<sup>338</sup> considering the specific dangers for employees with reduced work capability.<sup>339</sup> Further, there are a number of laws and secondary legislation instruments governing specific fields, such as transportation, including aviation, and other risk-intensive occupations, that provide for health requirements for access to employment in those fields. These norms providing for disability restrictions without any proportionality requirement conflict with PADA's ban on disability discrimination in all cases, apart from exhaustively listed specific exceptions.

#### **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

In Bulgaria, national law provides for exceptions for direct discrimination on grounds of age. Under PADA, there are altogether six exceptions for age, three of those referring to other laws that provide for age differentiation. For the latter, the law does not require proportionality.<sup>340</sup> For the other three exceptions, it does.<sup>341</sup>

The first exception for age discrimination under PADA, which is not subject to proportionality, is for pension ages, including occupational pensions.<sup>342</sup> The second exception which is not subject to proportionality is for measures and programs under the Employment Encouragement Act.<sup>343</sup> Those include special measures based on age. The third exception not subject to a proportionality test is the fixing of a maximum age for eligibility for loans under the Students and Doctoral Students Loans Act.<sup>344</sup>

The exceptions that do provide for objective justification are for: fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment;<sup>345</sup> fixing of maximum age requirements for recruitment linked to the training requirements of the post in question, or the need for a

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<sup>337</sup> PADA, Article 4 (1) in conjunction with Article 6 (1).

<sup>338</sup> HSWCA Article 16 (1.2a).

<sup>339</sup> HSWCA Article 16 (1.3).

<sup>340</sup> PADA, Article 7 (1.8-9) and (1.12).

<sup>341</sup> PADA, Article 7 (1.5-6) and (1.11).

<sup>342</sup> PADA, Article 7 (1.8).

<sup>343</sup> PADA, Article 7 (1.9).

<sup>344</sup> PADA, Article 7 (1.12).

<sup>345</sup> PADA, Article 7 (1.5).

reasonable period of employment before retirement;<sup>346</sup> fixing of requirements for minimum and maximum age for access to training or education.<sup>347</sup> The latter exception may fall within the scope of Directive 2000/78 as it implicitly applies to vocational training.

a) Justification of direct discrimination on the ground of age

In Bulgaria, it is not possible, generally, to justify direct discrimination on the ground of age. This is only possible in the exceptions outlined above. For three of those, no objective justification is required.

In 2016, the Supreme Administrative Court (SAC) held in two cases that persons dismissed on grounds of having become entitled to an old age and seniority pension were not discriminated against on grounds of age because under the law, the grounds for their dismissal was not age but their entitlement to a pension, and their entitlement to a pension was independent of age as seniority was taken into account.<sup>348</sup> SAC seemed to regard taking seniority into account as quite different from taking age into account, ignoring the link between the two, not elaborating why. It also ignored the fact that age *per se* was also a factor for pension entitlement under the law.

b) Permitted differences of treatment based on age

In Bulgaria, national law permits differences of treatment based on age for activities within the material scope of Directive 2000/78.<sup>349</sup>

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Bulgaria, national law does not allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2). PADA does allow for age requirements for purposes of pensions in general, including occupational ones, but those requirements have to be fixed by law.

The Supreme Administrative Court made contradictory rulings in 2014 on whether legal norms providing for age differentiation could, or could not be considered discrimination, and what the remedies would be.<sup>350</sup> Recent age litigation includes a challenge to age discrimination linked to a statutory age limit in access to the position of juror (successful), and a challenge to a secondary legislation age limit in access to prison/ judicial guards' jobs (unsuccessful).<sup>351</sup> In 2016 and 2017, there was no case law reflecting either one, or the other approach.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

In Bulgaria, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection. Under the Labour Code, employees under 18 are entitled to special protection and an employer may assist young employees.<sup>352</sup> The minimal age for access to employment is 16 years.<sup>353</sup> As an exception, 15-to-16-year-olds may be employed for light jobs that are not dangerous or harmful to them, and do not hamper their regular schooling

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<sup>346</sup> PADA, Article 7 (1.6).

<sup>347</sup> PADA, Article 7 (1.11).

<sup>348</sup> SAC Decision No. 611 of 12 July 2016 in case No. 1541/2016. SAC Decision No. 4418 of 14 April 2016 in case No. 4245/2016.

<sup>349</sup> PADA, Article 7 (1.5-6, 8-9) and (1.11-12).

<sup>350</sup> Please see Section 12.2 for details.

<sup>351</sup> See Section 12.2.

<sup>352</sup> Labour Code, latest amendments 22 December 2017, Article 294.6.

<sup>353</sup> Labour Code, Article 301 (1).

or vocational training.<sup>354</sup> Such persons may be employed only after a comprehensive medical examination certifying their capability for the job and that it won't harm their health or development.<sup>355</sup> Further, the employment of any such individual must be authorised by the authorities.<sup>356</sup> Similar requirements are provided for 16-to-18-year-olds too.<sup>357</sup> Employees under 18 may not do work which is beyond their capabilities, or harmful, or involving risks that an underage person is assumed to be unable to understand or to avoid due to their immaturity.<sup>358</sup> Further, employers are under a duty to give special care to employees under 18 by providing them with alleviated conditions for work and vocational training.<sup>359</sup> An employer is under a duty to warn employees under 18 and their parents of the risks involved in the job and of the health and safety measures.<sup>360</sup> Employees under 18 may not work more than 35 hours a week, or 7 hours a day, including vocational training time.<sup>361</sup> Such employees are entitled to no less than 26 working days annual leave.<sup>362</sup> The above entitlements only apply to employees under 18. Older workers have special protection too. In cases where workers are dismissed after reaching retirement age, regardless of the basis for their dismissal, they are entitled to compensation in the amount of 2 monthly salaries, and if they have worked with the employer for the last ten years, that compensation is in the amount of 6 monthly salaries.<sup>363</sup> By contrast, workers who are made redundant prior to having reached pension age are only entitled to no more than one month's salary in compensation.

Under the Labour Code, nursing women are entitled to certain special protections.

Under the Employment Encouragement Act, an employer who creates a new job and hires a person not older than 29 years to do it is entitled to public money for reimbursement of that person's salary for up to 18 months.<sup>364</sup> Further, an employer who creates a new intern position and hires a person not older than 29 years is entitled to public money for reimbursement of that person's salaries for up to nine months.<sup>365</sup> If the intern has a basic education degree or lower and no qualifications, the reimbursement period may extend to 12 months.<sup>366</sup> In all cases, recruits must be registered with the Employment Agency as employment seekers. Further, older workers are provided special conditions. An employer who creates a new job and hires a person older than 55 years is entitled to public money for reimbursement of that person's salary for up to a year.<sup>367</sup>

Under the Employment Encouragement Act, unemployed single parents (adoptive parents) and mothers (adoptive mothers) of children not older than 5 years enjoy special treatment too. Employers who hire them are entitled to state subsidies for their employment for up to a year.<sup>368</sup> Vocational training institutions are also entitled to state subsidies for providing such workers with training where that is organised by the employer and the Employment Agency.<sup>369</sup>

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<sup>354</sup> Labour Code, Article 301 (2).

<sup>355</sup> Labour Code, Article 302 (1).

<sup>356</sup> Labour Code, Article 302 (2).

<sup>357</sup> Labour Code, Article 303.

<sup>358</sup> Labour Code, Article 304.

<sup>359</sup> Labour Code, Article 305 (1).

<sup>360</sup> Labour Code, Article 305 (2).

<sup>361</sup> Labour Code, Article 305 (3).

<sup>362</sup> Labour Code, Article 305 (4).

<sup>363</sup> Labour Code, Article 222 (3).

<sup>364</sup> Employment Encouragement Act, Article 36.

<sup>365</sup> Employment Encouragement Act, Article 41. An intern in this case is a person with professional qualifications but no work experience (*ibid.*).

<sup>366</sup> Employment Encouragement Act, Article 41a.

<sup>367</sup> Employment Encouragement Act, Article 55a.

<sup>368</sup> Employment Encouragement Act, Article 53a (1).

<sup>369</sup> Employment Encouragement Act, Article 53a (2).

### 4.7.3 Minimum and maximum age requirements

In Bulgaria, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training. PADA permits the fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.<sup>370</sup> It further permits the fixing of maximum age requirements for recruitment linked to the training requirements of the post in question, or the need for a reasonable period of employment before retirement, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.<sup>371</sup>

### 4.7.4 Retirement

#### a) State pension age

In Bulgaria, there is a state pension age at which individuals can begin to collect their state pensions. The ages at which individuals become entitled to receipt of an old age pension are fixed by law. Age is not the only criterion for entitlement to a pension.

The number of years of service is taken into account too.<sup>372</sup> The relevant ages are different for women and men.<sup>373</sup> There is no need to defer receipt of one's pension. One can continue one's employment while collecting it.

If an individual wish to work longer, the pension can be deferred.

An individual can collect a pension and still work.

#### b) Occupational pension schemes

In Bulgaria, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. If an individual wish to work longer, payments from such occupational pension schemes can be deferred. An individual can collect a pension and still work. Workers, both women and men, become entitled to receipt of occupational pensions at 60.<sup>374</sup> As an exception, they can start collecting their occupational pensions 5 years earlier provided that this is provided for under a collective agreement.<sup>375</sup>

#### c) State imposed mandatory retirement ages

In Bulgaria, there are state-imposed mandatory retirement ages. They are *not* of general application. In some sectors only, such as the professional army,<sup>376</sup> and the police,<sup>377</sup> the relevant special laws impose age limits after which both women and men can no longer serve. However, there is no bar for them to find other employment, and still collect their pension. There have been minor changes in the maximum ages for the army in recent years.

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<sup>370</sup> PADA, Article 7 (1.5).

<sup>371</sup> PADA, Article 7 (1.6).

<sup>372</sup> *Social Security Code* (Кодекс за социално осигуряване), latest amendments 28 December 2017, Article 68.

<sup>373</sup> *Social Security Code*, Article 68. The respective ages are 61 for women, and 64 for men. These ages are to be gradually increased under the legislation until they reach 65 for women and 65 for men. However, age alone is not sufficient. A person needs in addition a certain number of years of work experience during which they made social security payments.

<sup>374</sup> *Social Security Code*, Article 243 (4).

<sup>375</sup> *Social Security Code*, Article 243 (6).

<sup>376</sup> *Defence and Armed Forces of the Republic of Bulgaria Act*, Article 160 (1). For soldiers, the limit is 46 years; that limit is raised for each higher rank, with 62 years as the limit for the highest-ranking officers.

<sup>377</sup> *Ministry of Interior Act*, Article 226 (1). The limit is 60 years.

In addition, under the Labour Code, one is subject to dismissal, at the employer's discretion, when one acquires the right to an old age pension.<sup>378</sup> Furthermore, Professors, Assistant Professors and Doctors of Science are subject to dismissal, at the employer's discretion, when they reach 65 years.<sup>379</sup> They still, nominally, retain employment rights, but effectively have no protection against dismissal on age grounds. No publicly accessible reasons for this legislative decision were articulated. There is an exception for Professors, Assistant Professors and Doctors of Science for whom the respective academic council decided to extend their labour contracts for a further year (but no more than three years for Professors and no more than two years for Assistant Professors).<sup>380</sup>

A further age-based provision gives employers discretion to dismiss a worker who was hired after s/he became entitled to an old age pension, and exercised that right.<sup>381</sup> In other words, employers can freely dismiss persons who they hired as pensioners.

In 2015, two new provisions were adopted (in force as of 1 January 2016) making it possible for the employer to dismiss: a) an employee who opted to receive a reduced pension a year earlier than the statutory old age upon acquiring the requisite number of years of service; and b) such an employee whom the employer hired after the employee had opted for a reduced pension.<sup>382</sup> Under the first of those provisions, there has been case law delivered but none on discrimination. Under the second provision, the case law is scarce, and does not relate to discrimination.

d) Retirement ages imposed by employers

In Bulgaria, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally. Those ages are imperatively governed by legislation, namely the Social Security Code in the general case, or special laws, such as those applicable to the police and army.

e) Employment rights applicable to all workers irrespective of age

After becoming a pensioner, leaving employment is the prerogative of the employee. Protection against dismissal and other employment rights apply to those workers irrespective of age. This applies to all workers, apart from those in the army and police, and some in academia.

f) Compliance of national law with CJEU case law

In Bulgaria, national legislation is, arguably, in line with the CJEU case law on age regarding compulsory retirement. While under PADA three age exceptions do not provide for a proportionality test, which is a compliance issue *per se*, only two age-based provisions actually exist that are thereby exempted and those do not appear unreasonable/disproportionate. Under the Labour Code, those two only provisions govern dismissal of certain categories of university staff once they reach 65 years and of pensioners who were hired after they became pensioners. While judicial interpretation is required concerning the proportionality of those provisions, arguably, they are in line with CJEU case law. In both cases, the persons concerned can seek alternative employment. Further, the special laws governing the police and army provide for compulsory retirement of officers at specified ages. In those cases, retirees are free to engage in other employment while collecting their pensions.

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<sup>378</sup> Labour Code, Article 328.10.

<sup>379</sup> Labour Code, Article 328.10.

<sup>380</sup> Labour Code, Article 328.10.

<sup>381</sup> Labour Code, Article 328.10b.

<sup>382</sup> Labour Code, Article 328.10a and 328.c.

#### 4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Bulgaria, national law does not permit age or seniority to be taken into account in selecting workers for redundancy. Under the Labour Code, the only criteria for selection for redundancy are lesser qualifications and worse work performance.<sup>383</sup> However, this barely matters because once an employee becomes entitled to an old age pension and starts receiving it, this in itself is a legal basis for an employer to dismiss them, even if there is no redundancy.<sup>384</sup> It is the same for persons who opted to receive a reduced pension one year earlier than their old age upon reaching the requisite number of years.<sup>385</sup> In the case of Professors, Associate Professors and Doctors of Science, once they reach the age of 65, this in itself is a legal basis for an employer to dismiss them, even if there is no redundancy (with limited exceptions based on decisions by the respective academic councils).<sup>386</sup>

b) Age taken into account for redundancy compensation

In Bulgaria, national law provides for compensation for redundancy. This is affected by the age of the worker.

Workers who are dismissed after having become entitled to retire, on any basis, implicitly including redundancy, are entitled to compensation in the amount of two monthly salaries.<sup>387</sup> This is preferential treatment compared to workers who are made redundant prior to having become entitled to a pension - those are only entitled to no more than one salary in compensation.<sup>388</sup> If workers dismissed after having become entitled to retire have worked with the employer for the last ten years, their compensation is in the amount of six monthly salaries.

#### 4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Bulgaria, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. PADA provides for no such exception.

#### 4.9 Any other exceptions

In Bulgaria, another exception to the prohibition of discrimination (on any ground) provided in national law is the following:

- different treatment of persons on grounds of religion/faith in religious education or training, including training or education for the purposes of carrying out an occupation in a religious-ethos institution.<sup>389</sup>

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<sup>383</sup> Labour Code, Article 329 (1).

<sup>384</sup> Labour Code, Article 328.10.

<sup>385</sup> Labour Code, Article 328.10a.

<sup>386</sup> Labour Code, Article 328.10.

<sup>387</sup> Labour Code, Article 222 (3).

<sup>388</sup> Labour Code, Article 222 (1).

<sup>389</sup> PADA, Article 7 (1.4).

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Bulgaria, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

PADA not only authorizes but mandates, in a general way, positive measures to equalize opportunities for disadvantaged groups. Several specific authorisations for positive action exist:

- different treatment of persons with disabilities in training or education aimed at equalising their opportunities;<sup>390</sup>
- special measures for the benefit of disadvantaged persons or groups aimed at equalising their opportunities, as far as and as long as such measures are necessary;<sup>391</sup>
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;<sup>392</sup>
- measures aimed at protecting the distinctive identity of persons belonging to ethnic, religious and linguistic minorities, and their rights, alone or with other members of their groups, to preserve and develop their culture, to profess and exercise their religion, and to use their language;<sup>393</sup>
- measures in training or education aimed at guaranteeing the participation of persons belonging to ethnic minorities, as far as and as long as such measures are necessary.<sup>394</sup>

PADA places a general duty on all authorities to take measures to equalise opportunities for disadvantaged groups, as well as to guarantee participation by ethnic minorities in education, whenever necessary to accomplish the objectives of equality law.<sup>395</sup> PADA requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.<sup>396</sup> However, no such measures are on record.

Under the Constitution, however, the position may be different. In 1992, the Constitutional Court (CC) held that preferential treatment on constitutionally protected grounds, including race/ethnicity, sex, and religion/belief is unconstitutional.<sup>397</sup> Therefore, any legislation providing for such action would be unconstitutional. By contrast, preferential measures based on other grounds, excluded from the constitutional equality clause, such as disability or age, would be constitutional.<sup>398</sup>

There may be a conflict, therefore, between the Constitution and PADA insofar as authorization for positive measures is concerned. The conflict may, however, be nominal. There are a number of positive policy measures in place for the benefit of ethnic groups, in particular, Roma, as well as sex quotas, which haven't been challenged over a number of years based on the constitutional case law. If a challenge were to be brought before the CC, it might well revise its earlier position about the unconstitutionality of positive action, and declare positive measures on grounds of sex, religion or ethnicity compatible with the Constitution. There has not been another CC ruling on this subject since. If, in a future

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<sup>390</sup> PADA, Article 7 (1.10).

<sup>391</sup> PADA, Article 7 (1.14).

<sup>392</sup> PADA, Article 7 (1.15).

<sup>393</sup> PADA, Article 7 (1.16).

<sup>394</sup> PADA, Article 7 (1.17). The law does not specify the measures allowed. Any measure falling into that category is excepted.

<sup>395</sup> PADA, Article 11 (1).

<sup>396</sup> PADA, Article 11 (2).

<sup>397</sup> Constitutional Court ruling No. 14 of 1992.

<sup>398</sup> Constitutional Court ruling No. 14 of 1992.



case the CC were to reproduce its 1992 ruling, that should raise the issue of the supremacy of EU law.

There are no legal developments with regard to refugees' and migrants' anti-discrimination rights to positive/ special measures (including case law). The government has adopted two ordinances discussed in previous chapters<sup>399</sup> and non-legal documents (National Strategy for Integration of Asylum Receivers 2014-2020;<sup>400</sup> National Strategy in the Field of Migration, Asylum and Integration 2015-2020)<sup>401</sup> that are not based on the concept of compensating for factual inequalities but on "integration" and, at best, treating foreigners in some cases on a par with nationals.

#### b) Main positive action measures in place on national level

##### *Quotas*

Under the Labour Code, employers with more than 50 employees are under a duty to annually set aside 4-10 % of all their workplaces for purposes of accommodating people with disabilities and other entitled persons.<sup>402</sup> 'Accommodating' here means transferring employees who become disabled while in employment to new jobs suitable for their altered/ reduced working abilities. Under the Integration of Persons with Disabilities Act, at least half of those workplaces are to be reserved for people with permanent disabilities.<sup>403</sup> Under the Integration of Persons with Disabilities Act, the employer is under a duty to announce any vacant workplaces adapted for persons with permanent disabilities with the unemployment offices.<sup>404</sup> Accordingly, those workplaces may be taken by persons outside the employer's organisation, including persons who were not employed before. Under the Labour Code, there is no explicit provision to such effect. However, the situation is similar in practice. Where a job applicant with a disability is qualified to take an adapted job, they will be hired if there is such a vacant workplace. Under the Labour Code, an employer who fails to discharge a duty under that Code is liable to a fine between EUR 750 and 7 500 (BGN 1 500 and 15 000) (Article 414). In addition, labour inspectorates are competent to order employers to eliminate breaches of the Labour Code (Article 404). Not obeying such an order leads to a fine (Article 415). According to Agency for People with Disabilities' statistics, in 2016 (no data is available yet for 2017), 32 859 workplaces were set aside; 18 756 of those – for persons with permanent disabilities; 11 083 workplaces were actually occupied by people with disabilities, and 11 829 – by people with permanent disabilities; 5 381 workplaces set aside were advertised as vacant.<sup>405</sup> This data is incomplete and unreliable because, as the Agency explicitly recognises in its 2016 report, 65 out of 98 territorial labour bureaux supplied data; possibly not all employers informed their bureau (2 346 did); there is no data on the number of employers who were under the duty; and the numbers stated for occupied and vacant workplaces don't seem to match up with the overall number of accommodated workplaces. "Accommodated" here means made suitable for persons with reduced/ altered working abilities.

Disability quotas are also provided for under the Civil Servant Act.<sup>406</sup> Authorities with more than 50 staff are bound to designate at least 2% of all positions for such people.<sup>407</sup>

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<sup>399</sup> The Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection, discussed above in Section 3.2.10, and the Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection, discussed above in Section 3.2.8.

<sup>400</sup> Available at: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1327> (in BG).

<sup>401</sup> Available at: [www.aref.government.bg/docs/strat.doc](http://www.aref.government.bg/docs/strat.doc) (in BG).

<sup>402</sup> Labour Code, Article 315 (1).

<sup>403</sup> IPDA, Article 27 (1).

<sup>404</sup> IPDA, Article 27 (2).

<sup>405</sup> Available at: <http://ahu.misp.government.bg/portal/document/51085> (in BG).

<sup>406</sup> Civil Servant Act, Article 9a.

<sup>407</sup> Civil Servant Act, Article 9a (1.1).

Authorities with staff between 26 and 50 are bound to designate at least one position.<sup>408</sup> Candidates for those positions compete only with other persons with disabilities.<sup>409</sup> In 2015, an amendment entered into force requiring 1 % to be set aside among civil servants in the Ministry of the Interior who are not police 'organs', among civil servants in the 'National Security' State Agency who are not directly involved in its specific activities, and among civil servants in the 'Technical Operations' State Agency (secret surveillance) who have employment contracts with the agency.<sup>410</sup>

#### *Preferential treatment narrowly tailored*

Under the Employment Encouragement Act, younger and older workers are entitled to preferences. An employer who creates a job and hires a person 29 years old or younger (a younger person) is entitled to a subsidy for that person's salary for up to 18 months.<sup>411</sup> An employer who creates an intern position and hires a younger person is entitled to a subsidy for that person's salary for up to nine months.<sup>412</sup> If the intern has a basic education degree or lower and no qualifications, the period may extend to 12 months.<sup>413</sup> In all cases, recruits must be registered with the Employment Agency as employment seekers. Further, an employer who creates a job and hires a person older than 50 years (older person) is entitled to a subsidy for that person's salary for up to a year.<sup>414</sup>

#### *Broad social policy measures*

Roma school desegregation measures are provided for under policy documents and a piece of secondary legislation: the *Framework Programme for Equal Integration of Roma into Bulgarian Society (2010-2020)*<sup>415</sup> and *Decree No 4 of the Council of Ministers of 11 January 2005 Creating a Centre for Educational Integration of Children and Students from Ethnic Minorities*,<sup>416</sup> as well as the *Programme for the Activities of the Centre for Educational Integration of Children and Students from Ethnic Minorities for 2016-2018*.<sup>417</sup>

Housing measures for Roma are provided for under the *Framework Programme for Equal Integration of Roma into Bulgarian Society (2010-2020)*.<sup>418</sup> and the *National Strategy of the Republic of Bulgaria for the Integration of Roma (2012-2020)*.<sup>419</sup>

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<sup>408</sup> Civil Servant Act, Article 9a (1.2).

<sup>409</sup> Civil Servant Act, Article 9a (1.2).

<sup>410</sup> Civil Servant Act, Article 9a (1.3).

<sup>411</sup> Employment Encouragement Act, Article 36. These measures are not recent but they are significant because of being provided for by law and because of their scope.

<sup>412</sup> Employment Encouragement Act, Article 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).

<sup>413</sup> Employment Encouragement Act, Article 41a.

<sup>414</sup> Employment Encouragement Act, Article 55a.

<sup>415</sup> Available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=609> (in BG).

<sup>416</sup> Available at: <http://coiduem.mon.bg/page.php?c=4&d=36> (in BG).

<sup>417</sup> Available at: <http://coiduem.mon.bg/page.php?c=4&d=271> (in BG).

<sup>418</sup> Available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=609> (in BG).

<sup>419</sup> Available at: <http://www.strategy.bg/FileHandler.ashx?fileId=2067>, p. 13.

## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Bulgaria, the following procedures exist for enforcing the principle of equal treatment (judicial/ administrative/ alternative dispute resolution such as mediation):

Under PADA, two main procedures exist:

- judicial proceedings before the general courts;<sup>420</sup>
- specialised quasi-judicial proceedings before PADC, the independent equality body, with judicial review by two instances of administrative courts.<sup>421</sup> This is complemented by a follow-up procedure for damages before the general courts (administrative ones for public-law respondents, and civil ones for everyone else).<sup>422</sup>

A victim can choose between the two. The general courts can make a declaration of discrimination and award compensation for damages, as well as order respondent to take remedial action, or to abstain from, or to terminate particular action or inaction found to be in breach of the law. The equality body can make a finding of discrimination, and order preventive or remedial action. It can also impose financial sanctions.<sup>423</sup> It cannot award compensation.

Under PADA, the judicial remedy before the general courts expressly points out as competent the civil courts, whoever the respondent. However, where respondent is a public authority, the case law is moving in the direction of recognising as competent not the civil courts, but the administrative ones. The PADC remedy is universally applicable, whoever the respondent. Both remedies are binding.

If a discrimination allegation is made before another administrative body, such as a labour inspectorate, under a procedure provided for under other legislation, that body will likely refer such allegation to PADC, the latter being the specialised body to deal with such allegations.

b) Barriers and other deterrents faced by litigants seeking redress

Under PADA, both the general court and the PADC procedures are exempt from costs, both state fees and expenses.<sup>424</sup> However, administrative case law does not respect this, and parties are ordered to pay each other's costs on losing, as well as court fees. Not only that, but PADC demands to be awarded costs when complainants appeal against its decisions before the court.<sup>425</sup> Where complainants are unsuccessful, the court orders them to pay PADC lawyers' fees. The reason that administrative courts ignore PADA's exemption of litigants from costs, is that, under that rule, costs are to be recuperated from courts' budgets.

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<sup>420</sup> PADA, Article 71.

<sup>421</sup> PADA, Articles 47, 50, and 68 (1).

<sup>422</sup> PADA, Article 74.

<sup>423</sup> The maximum amount of sanction imposable on an individual for an act of discrimination is the equivalent of EUR 1000. For legal persons this is EUR 1250. For a repeated offence, the sanction is automatically double. For a failure to abide by a decision of the equality body, the maximum sanction is EUR 5000. Where such a failure continues for more than three months after the decision imposing this sanction entered into force, the next sanction is up to EUR 10 000.

<sup>424</sup> PADA, Article 53 and Article 75 (2).

<sup>425</sup> PADC bases this practice on an interpretative ruling (тълкувателно решение) by the Supreme Administrative Court – No. 3 of 13.05.2010, rendered in commercial case No. 5 of 2009 (see PADC letter No. 44-00-1609 of 20.04.2015). This ruling is of general application, and not specific to cases under PADA. Its application to PADA cases contradicts PADA, Article 75 (2).

Litigants are free to represent themselves in both the judicial and PADC procedures.<sup>426</sup> Before the Supreme Court of Cassation only, a complaint needs to be signed by a lawyer,<sup>427</sup> but complainants can appear unrepresented at hearings. In practice, litigants without a lawyer would be at a disadvantage in court where proceedings are complicated and formal. Before the equality body, which has quasi-investigative powers and whose proceedings are more informal and victim-friendly, complainants are not that dependent on a lawyer. On the other hand, PADC is located in the capital, posing a geographical barrier.

Because of recent trends in case law shifting away from PADA provisions as regards the competence of civil courts in discrimination cases against public authorities, some such cases that were heard years ago by a civil court are on appeal being remanded to an administrative court, to start all over again, for no reason other than the courts' contradictory construction of competence rules in such cases.<sup>428</sup> This breaches persons' rights to reasonable length proceedings. While PADA seems clear enough that the civil courts are competent to hear all discrimination claims, and the administrative courts are only competent in damages cases where PADC already found discrimination, the case law has been inconsistent as regards the competence of the administrative courts as opposed to the civil courts in terms of antidiscrimination claims against public bodies. After years of judicial competence disputes between the civil and the administrative courts, an interpretative Supreme Court case was brought *ex officio* to unify the case law. In 2015, the Supreme Court of Cassation and the Supreme Administrative Court jointly ruled that in all cases of alleged discrimination against public bodies, the administrative courts were competent, including where no PADC proceedings took place prior to filing the claim with the court.<sup>429</sup> However, in 2017, in at least three cases, the Supreme Administrative Court has ruled that, on the contrary, the administrative courts were only competent to hear a damages claim against a public body where the claimant first brought proceedings before PADC, and secured a discrimination finding by it, whereas the civil courts were competent in all other cases.<sup>430</sup> In those cases, SAC declared lower court decisions inadmissible, and years of litigation were wasted for claimants. The case law remains unclear and unpredictable. The reasons for its shifting contradictions are unknown to the author of this report. A possible hypothesis is that each category of courts – administrative vs. civil – uses perceived ambiguities in the applicable legal provisions to avoid a part of the caseload associated with litigation under PADA.

The time limit for the civil court remedy is the general one for civil cases – 5 years. For the PADC remedy it is 3 years. There is no limit on the amounts of compensation the courts can award. The maximum amounts of sanctions imposable by PADC are provided for under PADA and appear reasonable. The rate of implementation of such decisions is not clear, however.

#### c) Number of discrimination cases brought to justice

In Bulgaria, there are available statistics on the number of cases related to discrimination brought to justice. However, those are not comprehensive, adequately disaggregated, or updated. Statistics are only available for the Sofia City Administrative Court (SCAC), hearing PADC-decided cases on judicial review as a first instance, as well as discrimination

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<sup>426</sup> For Supreme Court proceedings, both administrative (or judicial review) and civil, appellants only need to have a lawyer or *juris consult* to countersign their cassation appeal (Article 284 (2) of the Civil Procedure Code and Article 18 (1) of the Administrative Procedure Code) but the law does not require them to be represented at hearings.

<sup>427</sup> Civil Procedure Code, Article 284 (2).

<sup>428</sup> For instance, Decision No. 7685 of 18 November 2013 in civil case No. 10724/2013, Sofia City Court.

<sup>429</sup> Interpretative Decree 2/2014 of 19 May 2015.

<sup>430</sup> Supreme Administrative Court Decision No. 8753 of 5 July 2017 in case No. 8115/2016, Decision No. 8583 of 4 July 2017 in case No. 7679/2015, Ruling (Определение) No. 9034 of 11 July 2017 in case No. 6859/2017.

claims against public bodies. In 2013, 119 such cases were filed with that court.<sup>431</sup> In 2014, 180.<sup>432</sup> In 2015, the cases were 228.<sup>433</sup> In 2016, those cases were 141.<sup>434</sup> In 2017, those cases were 114 (out of 3692 cases in total).<sup>435</sup> No statistics are available for the number of such cases decided. There are no statistics for the Supreme Administrative Court, hearing PADC cases on judicial review as a last instance.<sup>436</sup> There are no statistics for the civil courts. There are no statistics for administrative courts hearing discrimination cases as a first instance.

PADC does statistics concerning its own caseload, as a part of its annual report to Parliament, but the one for 2017 is not yet available. Although there is no such requirement under the law, PADC only publishes its annual reports on its website once they are approved by Parliament. Parliament can, in practice, delay that indefinitely. This happened in the years 2012 and 2013. The 2014 report was also delayed. The 2016 report has been published,<sup>437</sup> but not the one for 2017. PADC statistics are ground-, and field-disaggregated.

#### d) Registration of discrimination cases by national courts

In Bulgaria, discrimination cases are registered as such by national courts. However, this only applies to the Sofia City Administrative Court, hearing PADC-decided cases on judicial review as a first instance.<sup>438</sup> This data is published in the Supreme Administrative Court's annual report on the activities of administrative courts. It is also published in Sofia City Administrative Court's activity report.<sup>439</sup> Those statistics are not ground-, or field-disaggregated. They are publicly available.

## 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

#### a) Engaging on behalf of victims of discrimination (representing them)

In Bulgaria, organisations and trade unions are entitled to act on behalf of victims of discrimination. Before the equality body, any entity may represent an individual or another entity.<sup>440</sup> Before the civil courts, trade unions and legal persons for non-profit purposes registered in the public interest may represent victims.<sup>441</sup> Legal persons for non-profit

<sup>431</sup> See *Report on the implementation of the law and the activities of administrative courts in 2013* (Доклад за прилагането на закона и за дейността на административните съдилища през 2013 г.), p. 226 (<http://www.sac.government.bg/pages/bg/progress-reports>) (in BG).

<sup>432</sup> See *Report on the activities of the Sofia City Administrative Court in 2014* (Доклад за дейността на Административен съд София-град през 2014 г.) (<http://www.admincourtsofia.bg/Засяда/Доклади/ДокладзадейносттанаАССГза2014г.aspx>) (in BG).

<sup>433</sup> See *Report on the activities of the Sofia City Administrative Court in 2015* (Доклад за дейността на Административен съд София-град през 2015 г.): <http://www.admincourtsofia.bg/Засяда/Доклади/ДокладзадейносттанаАССГза2015г.aspx> (in BG).

<sup>434</sup> See *Report on the activities of the Sofia City Administrative Court in 2016* (Доклад за дейността на Административен съд София-град през 2016 г.): <http://www.admincourtsofia.bg/Засяда/Доклади/ДокладзадейносттанаАССГза2016г.aspx>.

<sup>435</sup> See *Report on the activities of the Sofia City Administrative Court in 2017* (Доклад за дейността на Административен съд София-град през 2017 г.): <http://www.admincourtsofia.bg/LinkClick.aspx?fileticket=C7n3wIowC1A%3d&tabid=252>.

<sup>436</sup> Telephone interview with the Court's Head Statistician, 23 April 2015.

<sup>437</sup> Available at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>438</sup> See *Report on the implementation of the law and the activities of administrative courts in 2016* (Доклад за прилагането на закона и за дейността на административните съдилища през 2016 г.): [http://www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/\\$FILE/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%90%D0%A1%202016%20doc.pdf](http://www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/$FILE/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%90%D0%A1%202016%20doc.pdf) (in BG).

<sup>439</sup> The 2016 report is available at: <http://www.admincourtsofia.bg/Засяда/Доклади/ДокладзадейносттанаАССГза2016г.aspx>.

<sup>440</sup> Administrative Procedure Code, latest amendments 28 December 2017, Article 18 (2).

<sup>441</sup> PADA, Article 71 (2).

purposes are foundations or associations.<sup>442</sup> The ones self-determined to be in the public interest register with the Ministry of Justice.<sup>443</sup> They are subject to stricter requirements.<sup>444</sup> Arguably, a non-profit not registered under national legislation as one 'in the public interest' can still claim standing before the courts, by substantiating that in fact its activities are public interest ones.<sup>445</sup>

There is no legal duty for NGOs or trade unions to act.

b) Engaging in support of victims of discrimination

In Bulgaria, organisations and trade unions are entitled to act in support of victims of discrimination. Before the civil courts, trade unions and legal persons for non-profit purposes in the public interest may enter victim-brought cases in an 'interested party' capacity.<sup>446</sup> There is no legal duty for NGOs or trade unions to do so. There is no formal possibility under the law for NGOs or trade unions to join cases before PADC.

NGOs do not use their 'interested party' standing mentioned above to support claimants before the courts. Usually, NGOs provide lawyers to represent claimants, or take court action on their own (the NGOs') behalf. Rarely, they also use the NGO itself (as opposed to an individual lawyer) as a representative for a claimant. In those cases, a lawyer would represent the NGO that represents a victim.

c) Actio popularis

In Bulgaria, national law allows organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**). Under PADA, any entity can bring proceedings before PADC without identifying a specific victim.<sup>447</sup> No special requirements apply; incorporation is enough. However, in 2014, the Supreme Administrative Court has initiated a case law trend requiring a specific victim to be identified before a sanctionable breach of PADA can be established.<sup>448</sup> That trend has not since been conclusively confirmed or reversed.

Before the civil courts, trade unions and public interest non-profits can take *actio popularis* action 'where the rights of many parties are infringed' (Article 71 (3) PADA). Entity incorporation is required. Non-profits not formally registered as being in the public interest need to substantiate how their activities are publicly useful in fact. Both trade unions and non-profits need to substantiate how the alleged discrimination affected many persons. There is no legal definition of 'many'. In the past, in one case, judges have accepted as few as 10 to be enough. In another case, they have frustrated implementation of the legal provision requiring that victims be enumerated, and each one – individualized. Trade unions and non-profits can seek a declaration of discrimination, and a court order on respondent to stop and abstain from the impugned conduct. No special rules apply concerning the shifting burden of proof. However, in one case a trial court judge held *obiter* that the shifting burden of proof was not meant to apply in *actio popularis* cases because NGOs had the resources to prove discrimination, unlike victims. Before PADC, *actio popularis* claimants can seek the same remedies as victims.

d) Class action

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<sup>442</sup> Legal Persons for Non-profit Purposes Act (Закон за юридическите лица с нестопанска цел), latest amendments 27 December 2016, Article 1 (2).

<sup>443</sup> Legal Persons for Non-profit Purposes Act, Article 2 (1 and 3).

<sup>444</sup> Legal Persons for Non-profit Purposes Act, Chapter Three.

<sup>445</sup> The Legal Persons for Non-profit Purposes Act, Article 38 (1), specifies which activities qualify as public interest ones.

<sup>446</sup> PADA, Article 71 (2).

<sup>447</sup> PADA, Article 50.3.

<sup>448</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013; Decision No. 15637 in case No. 1925/2014.

In Bulgaria, national law allows organisations and trade unions to act in the interest of more than one individual victim (**class action**) for claims arising from the same event. Under general civil procedure law, organizations for the protection of a particular category of victims, or for the protection of persons from a particular type of violation have standing to bring collective claims in court.<sup>449</sup> Such claims can be brought on behalf of all victims of a single violation where their 'circle cannot be exactly defined but is definable'.<sup>450</sup> Entities would need to prove incorporation and the fact of existing 'for the protection' of the relevant victim category. In addition, they are expressly required by law to prove their abilities to 'seriously and in good faith' defend the collective interest harmed, as well as to bear the burden of taking the case, including costs and expenses.<sup>451</sup> Entities will have to explicate the circumstances defining the relevant 'circle of victims'. They can claim on behalf of all victims that a tortious action or inaction be declared unlawful, that the respondent be ordered to abort the violation, and/or to correct its consequences for the collective interest, or to pay compensation.<sup>452</sup> These general provisions on collective claims implicitly apply to discrimination cases too. No special rules on the shifting burden of proof apply.

### 6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Bulgaria, national law requires a shift of the burden of proof from the complainant to the respondent. PADA requires this in all anti-discrimination proceedings, implicitly for any form of discrimination, where claimant has proven facts from which a conclusion for discrimination can be made.<sup>453</sup> In 2014, a draft law was introduced to amend this provision. It proposed the following language: "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." In Parliament, the bill underwent an unannounced change after which the provision read: "In proceedings for protection against discrimination, after the party claiming to have been discriminated against, produces 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."<sup>454</sup>

Implementation of the shift of the burden of proof rule is rudimentary. Judges and equality body members and staff lack meaningful comprehension of that rule. There has been no training on that for judges. Only one case (sex discrimination) is on record where the ruling hinged on the shifting burden of proof. The Supreme Administrative Court found that sex was the reason for the less favourable treatment on grounds that respondent failed to establish a legitimate reason.<sup>455</sup>

In 2015, the shift of the burden of proof provision in PADA was amended. Article 9 now reads: "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). 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."<sup>456</sup>

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<sup>449</sup> Civil Procedure Code, Article 379.

<sup>450</sup> Civil Procedure Code, Article 379 (1).

<sup>451</sup> Civil Procedure Code, Article 380 (3).

<sup>452</sup> Civil Procedure Code, Article 379 (2-3).

<sup>453</sup> PADA, Article 9.

<sup>454</sup> Available at: <http://www.parliament.bg/bg/bills/ID/15141/> (in BG). This version was adopted in 2015, after the cut-off date for this report (State Gazette issue No 26 of 7 April 2015).

<sup>455</sup> Decision No. 274 of 09 January 2012 in case No. 1319/2011.

<sup>456</sup> For more information, see Section 12.1 below.

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Bulgaria, there are legal measures of protection against victimisation. PADA expressly prohibits victimisation as a form of discrimination.<sup>457</sup> Victimisation is defined as: a) less favourable treatment of a person who has taken, or is presumed to have taken, or to be taking in the future any action for protection against discrimination; b) less favourable treatment of a person where a person associated with them has taken, or is presumed to have taken, or to be taking in the future any action for protection against discrimination; c) less favourable treatment of a person who refused to discriminate.<sup>458</sup> The term 'a person' has not been interpreted as excluding groups of persons from protection. Nominally, it could be interpreted in that way but that is not likely. Therefore, protection is accorded for victimisation by presumption and by association too. Action for protection against discrimination may include, but is not limited to, bringing proceedings before the equality body or the court, in either victim or third-party capacity, or testifying in proceedings.<sup>459</sup> Therefore, any person who assisted any action against discrimination in any way is entitled to protection from victimisation.

#### **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

##### **a) Applicable sanctions in cases of discrimination – in law and in practice**

PADC can impose financial sanctions between EUR 125 and 1 250 (BGN 250 to 2 500), amounts that would be dissuasive to the majority of individuals and small enterprises.<sup>460</sup> While medium-sized and large businesses may not be deterred by the actual amounts, the bad publicity of being found to be discriminators motivates them to actively engage in proceedings and in settlements where complainants are open to the latter. Those sanctions are administrative fines and are not awarded to the victim as compensation but go to the PADC budget.<sup>461</sup> Where a breach is repeated, the sanction is double.<sup>462</sup> Those sanctions are uniformly applicable to all sectors and fields, including the private and public ones, as well as fields outside employment. PADC can, further, order particular remedial action by discriminators, and suspend the execution of employers' decisions where those may result in discrimination.<sup>463</sup> The civil courts do not impose fines. They only award compensation for damages (Article 71 (1.3) PADA).

##### **b) Ceiling and amount of compensation**

There is no information available concerning the average amount of compensation awarded to victims. There is no maximum amount of compensation.<sup>464</sup> The courts can award any amount that is fair (non-pecuniary damages) or proven (pecuniary damages).

##### **c) Assessment of the sanctions**

Whether sanctions are effective hinges on whether PADC decisions are implemented at an adequate rate. The latter is unclear. Fines can be supposed to be enforced, and their amounts seem dissuasive. However, remedial orders cannot be supposed to be enforced, and there is no information what their actual rate of implementation is.

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<sup>457</sup> PADA, Article 5.

<sup>458</sup> PADA, Additional Provision § 1.3.

<sup>459</sup> PADA, Additional Provision § 1.3.

<sup>460</sup> PADA, Article 78-80.

<sup>461</sup> PADA, Article 83.

<sup>462</sup> PADA, Article 81.

<sup>463</sup> PADA, Article 76.

<sup>464</sup> This concerns indemnification of a victim's pecuniary or non-pecuniary damages whatever those might be in the particular case, and not financial punishment by the state by decision of the equality body.



## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

In Bulgaria, the Protection Against Discrimination Commission (PADC) has been designated as a specialised body within the meaning of Article 13 of the Racial Equality Directive. It has existed since 2004, with a mandate to enforce and promote equality on an open-ended list of grounds, including race/ ethnicity. PADC is a collegiate body consisting of nine members, including at least four lawyers.<sup>465</sup> Parliament elects five of its members, and the President appoints four. Under rules adopted by Parliament and the President in 2017 governing nominations and selection procedures for PADC members, the only substantive criterion is having “knowledge and experience in human rights protection” pursuant to Article 42 (1.2) PADA. Under the President’s rules, NGOs and individuals have standing to nominate candidates. However, the President’s discretion in choosing among proposed candidates remains legally unfettered and non-transparent. The newly adopted rules do not govern the making of the presidential choice, nor do they require articulating reasons for it; they exclusively govern the nominating of candidates. Under Parliament’s new procedure, only MPs and parliamentary groups have standing to propose candidates. For a full description of both procedures, see below, p. 152. PADC members have a five-year term of office.<sup>466</sup> PADC adopts its own regulations to govern its activities and structure, including its administration’s competences and numbers.<sup>467</sup> Under the law, PADC: establishes equality law violations; issues injunctions to prevent, or terminate breaches, and to restore the status quo ante; sanctions perpetrators; brings judicial review actions; files claims with the civil courts; joins court proceedings in an *amicus curiae* capacity; makes recommendations to public bodies; gives opinions on draft legislation; assists victims of discrimination in filing complaints; carries out independent research; and publishes independent reports.<sup>468</sup> It informs the public on equality law provisions, and carries out other activities as stipulated under its own regulations.<sup>469</sup>

The Ombudsman has no competence to promote equal treatment under the law. Nor does any other institution in any general way. Certain specialised bodies monitoring specific areas have specific, narrowly-tailored equality-monitoring duties that are not comparable to PADC’s comprehensive competence. For instance, the Council for Electronic Media (CEM) has a competence to enforce bans on discriminatory ads under Article 75 (5.2) of the Radio and Television Act (RTA), on discrimination in broadcasting under Articles 6 (2.3) and 36 (1.3) RTA, and on hate speech under Article 17 (2) RTA. PADC and CEM do not cooperate.

- b) Political, economic and social context for the designated body

In 2017, as in previous years, politicians from extreme nationalist parties, such as “Ataka”, attacked PADC during parliamentary debates on PADC annual report and the election of new members. Such politicians have called for PADC to be closed down, or its budget cut.<sup>470</sup> The fact that PADC deals with sexual orientation has not been a prominent reason for these attacks. Mostly, racism against Roma and Turks has motivated them. Politicians

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<sup>465</sup> Article 41 (1) of the Protection Against Discrimination Act (PADA).

<sup>466</sup> Article 41 (2) PADA.

<sup>467</sup> Article 46 PADA.

<sup>468</sup> Article 47 PADA.

<sup>469</sup> Article 47 PADA.

<sup>470</sup> See media reports at, inter alia: <https://www.novini.bg/news/433223-%D0%BF%D0%B0%D0%B2%D0%B5%D0%BB-%D1%88%D0%BE%D0%BF%D0%BE%D0%B2-%D0%BA%D0%B7%D0%B4-%D0%B5-%D0%BF%D0%B0%D0%BB%D0%BA%D0%B0-%D0%B2-%D1%87%D1%83%D0%B6%D0%B4%D0%B8-%D1%81%D0%B8%D0%BB%D0%B8.html>; <https://news.bg/bulgaria/ana-dzhumalieva-oglav-i-komisiyata-za-zashtita-ot-diskriminatsiya.html>; [https://www.dnevnik.bg/politika/2017/07/28/3015102\\_pavel\\_shopov\\_ot\\_ataka\\_poiska\\_zakrivane\\_na\\_komi\\_siiata/](https://www.dnevnik.bg/politika/2017/07/28/3015102_pavel_shopov_ot_ataka_poiska_zakrivane_na_komi_siiata/) (in BG).

from the Turkish minority-backed Movement for Rights and Freedoms party have defended PADC.<sup>471</sup>

There is no evidence of direct political interference in PADC's governance (if the fact is disregarded that by choosing PADC members, the President and Parliament influence the body's subsequent performance). However, in some cases of alleged discrimination brought against political leaders or high-ranking public officials, PADC proceedings have been unreasonably lengthy and/ or its decisions have been marked by a tendency to exonerate the public figures involved. There has been no formal study on PADC's independence in practice to support or not those expert observations.

In recent years, PADC's budget has been increasing annually. In 2014, it was BGN 2 000 000 (approx. EUR 1 000 000).<sup>472</sup> In 2015, it was BGN 2 092 000 (approx. EUR 1 046 000).<sup>473</sup> In 2016, it was BGN 2 248 000 (approx. EUR 1 124 000).<sup>474</sup> In 2017, it was BGN 2 500 000 (approx. EUR 1 250 000).<sup>475</sup> In 2018, it is BGN 2 570 000 (approx. EUR 1 285 000).<sup>476</sup> PADC has stated that its "being guaranteed adequate financial resources is a part of its being supported as a national human rights institution within the meaning of the Paris Principles",<sup>477</sup> signalling that PADC considers itself politically supported (or is unwilling to admit otherwise).

At the same time, in its public annual reports to Parliament, PADC has repeatedly advocated for funding to adequately back its activities. In addition, PADC has stated that three of its regional offices are not operational due to a lack of funds needed to staff them.<sup>478</sup> According to PADC, the 21 operational PADC regional offices are each staffed by a single employee.<sup>479</sup> In four of the country's 28 regions, PADC has yet to establish a regional office, not having the means to secure local office space.<sup>480</sup> Where PADC regional offices do exist, they are hosted in the respective regional governor offices (rather than in facilities of PADC's own).<sup>481</sup>

There has been no public debate focusing specifically on PADC in general or on equality as exemplified by PADC activities. PADC has not been in confrontation with high-profile figures over discriminatory instances or practices. It has avoided taking sides in controversies, such as high-profile race, LGBT or religious issues, and has instead in its promotional activities focused on disability or healthcare rights, not provoking public opinion. On one occasion in 2012, a PADC report on stereotypes in schooling, there was public and governmental backlash due to a misconception that the report advocated for iconic national literature to be excluded from textbooks. PADC backed down and disavowed its own report.<sup>482</sup>

Recent public debates on Bulgaria's ratification of the Istanbul Convention and on the abolition of an annual parade to commemorate a Nazi-type historical military figure were marked by intense, respectively, homophobic, and anti-Semitic/ anti-minority stances. Radical homophobia has arguably dominated public opinion on ratification of the

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<sup>471</sup> See media reports, inter alia at:

[https://www.dnevnik.bg/politika/2017/07/28/3015102\\_pavel\\_shopov\\_ot\\_ataka\\_poiska\\_zakrivane\\_na\\_komi\\_siiata/](https://www.dnevnik.bg/politika/2017/07/28/3015102_pavel_shopov_ot_ataka_poiska_zakrivane_na_komi_siiata/).

<sup>472</sup> Article 27, State Budget Act 2014.

<sup>473</sup> Article 28, State Budget Act 2015.

<sup>474</sup> Article 28, State Budget Act 2016.

<sup>475</sup> Article 28, State Budget Act 2017.

<sup>476</sup> Article 29, State Budget Act 2018.

<sup>477</sup> Official PADC information officially delivered to the author of this report on 16 February 2018 under access to public information legislation.

<sup>478</sup> Official PADC information officially delivered to the author of this report on 16 February 2018 under access to public information legislation.

<sup>479</sup> Ibid.

<sup>480</sup> Ibid.

<sup>481</sup> Ibid.

<sup>482</sup> See details on p. 12 below.

Convention. Religious organisations across the spectrum, as well as extreme nationalist parties, fiercely opposed it.<sup>483</sup> PADC made a public statement, not arguing in favour of ratification but merely expressing concern over “a hate speech rise” and calling for „reconciliation”.<sup>484</sup> As a result of the mobilization of homophobic actors and discourses, on 14 February 2018, the government backed down, failing to pursue ratification of the Convention that Bulgaria signed in 2016.<sup>485</sup>

### c) Institutional architecture

Under PADA, the national antidiscrimination law, PADC is an equality body exclusively. It does not form a part of larger body. It is a stand-alone equality body.

On unknown legal (or policy) grounds, Bulgaria nominated PADC as OSCE National Contact Point for Hate Crime (NCPHC).<sup>486</sup> NCPHCs are meant to help states “[s]trengthen efforts to collect and maintain reliable information and statistics on hate crimes and legislation, to report such information periodically to the ODIHR, and to make this information available to the public [...]”.<sup>487</sup> PADC has been NCPHC for Bulgaria since 2009.<sup>488</sup> It is unclear how it was chosen for that role, not having a mandate under the law to deal with any criminal justice issues. PADC annual activities as NCPHC consist of coordinating the collection and analysis of hate crime data by the Supreme Judicial Council, the Supreme Court of Cassation, the Supreme Prosecutor’s Office of Cassation and the Ministry of the Interior. PADC then uses their data to fill-in the questionnaire required by OSCE.<sup>489</sup>

In 2015, PADC reportedly initiated inter-institutional cooperation to unify the systems for registering and reporting hate crime nation-wide, aiming to create a *National coordination mechanism to improve the registering and reporting of hate crime in Bulgaria*.<sup>490</sup> No information is available whether this was achieved.

In addition, in 2011, PADC applied, and a UN body accredited it, as a National Human Rights Institution (NHRI) within the meaning of the Paris Principles. There is no domestic legal basis, other than PADA, for considering PADA a human rights body, i.e. the basis for its accreditation was its equality rights mandate. PADC’s level of accreditation is “B”, i.e. it is an “observer member” as opposed to a “voting member”. An observer member does not fully comply with the Paris Principles, or has not yet sufficiently substantiated that claim. “B” status institutions participate as observers in NHRI international and regional proceedings. They cannot vote or hold office with the relevant UN bodies. They are not given NHRIs badges, nor may they take the floor or submit documentation to the Human Rights Council.

The reasons given by the Sub-Committee on Accreditation (SCA), the deciding body, for accrediting PADC as a “B” institution include the fact that PADC does not have a mandate

<sup>483</sup> See media coverage at, inter alia: [https://www.dnevnik.bg/bulgaria/2018/02/17/3130749\\_djizus\\_sreshtu\\_djendura\\_-\\_pred\\_kogo\\_otstupi\\_borisov\\_zh/?ref=home\\_layer2](https://www.dnevnik.bg/bulgaria/2018/02/17/3130749_djizus_sreshtu_djendura_-_pred_kogo_otstupi_borisov_zh/?ref=home_layer2) (BG).

<sup>484</sup> See at: <http://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1103--2018> (in BG).

<sup>485</sup> See media coverage at, inter alia: [https://www.dnevnik.bg/bulgaria/2018/02/17/3130749\\_djizus\\_sreshtu\\_djendura\\_-\\_pred\\_kogo\\_otstupi\\_borisov\\_zh/?ref=home\\_layer2](https://www.dnevnik.bg/bulgaria/2018/02/17/3130749_djizus_sreshtu_djendura_-_pred_kogo_otstupi_borisov_zh/?ref=home_layer2) (BG).

<sup>486</sup> See at: [http://tandis.odihr.pl/content/documents/table\\_npc.pdf](http://tandis.odihr.pl/content/documents/table_npc.pdf).

<sup>487</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2014), Hate Crime Data-Collection and Monitoring Mechanisms: A practical Guide, p. 46, available at: <http://www.osce.org/odihr/datacollectionguide?download=true>.

<sup>488</sup> PADC Annual Report for 2009, p. 6, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/pdf/annual\\_report\\_2009%20new.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/pdf/annual_report_2009%20new.pdf).

<sup>489</sup> Inter alia, PADC Annual report for 2016, p. 158, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>490</sup> PADC Annual report for 2015, p. 95-96, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet\\_2015\\_KZD.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf).

to protect and promote all human rights.<sup>491</sup> Furthermore, SCA has found that “the existing [domestic] legislation does not provide a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, [PADC]”.<sup>492</sup> SCA has encouraged PADC to advocate for legislative amendments to:

- publicise PADC member vacancies;
- maximise the number of potential candidates from a wide range of societal groups;
- promote broad consultation and/or participation in the application, screening and selection process; and
- ensure pluralism in the composition of the Commission.<sup>493</sup>

i) Status of the body

PADC is an independent body by law. Under PADA, it is expressly defined as an “independent specialized state body”.<sup>494</sup> Under the law, it manages its own budget, a part of the state budget.<sup>495</sup> It is expressly defined as having its own legal personality.<sup>496</sup> Parliament elects five of its nine members, including the chairperson and deputy-chairperson, and the President appoints four. PADC members have a five-year term of office.<sup>497</sup> PADC adopts its own regulations governing its activities and structure, including its administration’s competences and numbers.<sup>498</sup> Under its regulations, the PADC chairperson fixes the structure of PADC’s administration and the job descriptions of its employees.<sup>499</sup> S/he appoints, promotes and dismisses employees,<sup>500</sup> and contracts external experts.<sup>501</sup> PADC is accountable to Parliament only. Under the law, it annually reports in writing to Parliament on its activities.<sup>502</sup>

ii) Independence of the body

PADC is expressly independent by law.<sup>503</sup> PADC has stated that its chairperson carries out her/his powers “without hindrance and fully independently”.<sup>504</sup>

In practice, however, PADA independence has been limited due to non-transparent member-election procedures resulting in Parliament and the President choosing individuals lacking personal qualities and professional qualifications to enable them to form opinions independent of any authority or of public opinion. While both Parliament and the President adopted in 2017 rules on the nominating of candidates, the President’s decision-making process remains fully discretionary and non-transparent under the new rules. The parliamentary procedure provides for transparency although not necessarily for

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<sup>491</sup> International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 25 – 28 October 2011, pp. 9-10, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20%28with%20annexes%29.pdf>.

<sup>492</sup> Ibid.

<sup>493</sup> Ibid.

<sup>494</sup> Article 40 (1) PADA.

<sup>495</sup> Article 40 (3) PADA.

<sup>496</sup> Article 40 (3) PADA.

<sup>497</sup> Article 41 (2) PADA.

<sup>498</sup> Article 46 PADA.

<sup>499</sup> Article 9.5 of the Regulations on the Structure and Activities of the Protection Against Discrimination Commission (Правилник за устройство и дейността на Комисията за защита от дискриминация).

<sup>500</sup> Article 9.6 of the Regulations on the Structure and Activities of the Protection Against Discrimination Commission.

<sup>501</sup> Article 9.7 of the Regulations on the Structure and Activities of the Protection Against Discrimination Commission.

<sup>502</sup> Article 40 (5) PADA.

<sup>503</sup> Article 40 (1) PADA.

<sup>504</sup> Information officially delivered by PADC to the author of this report on 16 February 2018.

accountability as the selection process remains political, and its outcome is not necessarily merit-based.

As discussed above in Section 7.c Institutional Architecture, SCA accredited PADC as a “B” rather than an “A” National Human Rights Institution under the Paris Principles on grounds that PADC does not fully conform to the Paris Principles regarding independence. The newly-adopted rules by parliament and the President do not address these considerations I full.

PADC members have included Parliament-elected individuals belonging to extreme nationalist parties, such as “Ataka”. Their anti-minority stances have arguably affected PADC case law accordingly.

PADC has avoided a critical approach to public figures or practices on controversial matters, and in some cases has protracted proceedings against politicians and officials.

Furthermore, PADC regional representatives operate from offices provided for free by the regional governors, located in regional government buildings.<sup>505</sup> It is unclear at what level of independence in practice a PADC regional representative would operate, dealing with a complainant against the regional government. The same is valid of PADC regional representatives’ relationships with municipal governments. PADC regional representatives rely on municipal employees in each municipality to organise on-site consultations for potential complainants.<sup>506</sup> In 2016, PADC sent out letters to all municipality mayors, asking for assistance in terms of organising on-site consultations, to which mayors responded by designating an employee to assist the relevant PADC regional representative.<sup>507</sup> That municipal employee is in charge of securing office space for PADC on-site consultations – most likely, in a local government facility, as well as local public visibility for the event to enable interested individuals to have access.<sup>508</sup> It is unclear at what level of practical independence a PADC regional representative would act, if a victim required her/his assistance to complain against the local government hosting the consultation.

#### e) Grounds covered by the designated body

Under the law, PADC deals with an open-ended list of grounds: gender, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to.<sup>509</sup>

PADC has stated that the six EU-protected grounds receive “adequate and proportionate expert attention” in PADC proceedings, not specifying what particular mechanism was there to ensure that.<sup>510</sup> In practice, PADC acts on every admissible complaint/ third party motion, instituting proceedings, and rendering a decision as a result (it deals with inadmissible/ irregular complaints by giving guidance as to how the documents it be corrected). Therefore, how many PADC proceedings and decisions deal with a particular ground reflects the number of complaints/ third party motions filed on that ground. There is no indication that PADC has been using its powers to *ex officio* initiate proceedings, or

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<sup>505</sup> Information officially delivered by PADC to the author of this report on 16 February 2018.

<sup>506</sup> Ibid.

<sup>507</sup> Ibid.

<sup>508</sup> Ibid.

<sup>509</sup> Article 4 (1) PADA.

<sup>510</sup> Information delivered by PADC to the author of this report on 16 February 2018.

to bring court proceedings, in such a way so as to compensate for potential underreporting of cases on a particular ground. There does not appear to be any internal institutional mechanism in place to ensure that PADC prioritises underreported grounds by using its powers to conduct surveys and assist victims. Its victim assistance activities seem to respond to demand by proactive potential complainants coming forth asking for such assistance, with little, it seems, being done to compensate for a lack of activity in disenfranchised communities, such as segregated and destitute Roma settlements.

PADC members hear cases sitting in “specialised” three-member panels dealing each with a fixed set of grounds: First Panel – race and ethnicity; Second Panel – gender, human genome, trade union affiliation and labour rights; Third Panel – national origin, nationality, origin, religion, faith and personal status; Fourth Panel – education, belief, political affiliation, public status, property status; Fifth Panel – disability, age, sexual orientation, family status. There is further a five-member panel designated to deal with multiple discrimination. However, in terms of substantive reasoning, intersections of grounds are not being given meaningful attention in PADC’s case law.

Migrants are included in PADC’s mandate and activities under the strands of race/ ethnicity, religion, national origin, origin, personal status and nationality, as well as those strands’ intersections. In practice, PADC has dealt with cases of hate speech against refugees and migrants, as well as discriminatory rejections (for instance, of local residence registration) by local authorities. It has dealt with such cases for the most part based on complaints by victims or motions by third parties, and not *ex officio*. PADC has not been treating migrants as a priority.

- f) Competences of the designated body – and their independent and effective exercise
  - i) Independent assistance to victims

In Bulgaria, PADC is competent under the law to provide independent assistance to victims of discrimination in filing their complaints.<sup>511</sup> The law does not specify the type of proceedings this provision refers to, i.e. whether PADC proceedings, or court proceedings, or both. However, the use of the word “complaints” may be taken to suggest that the provision refers to PADC proceedings, as court proceedings would be initiated by a claim. PADC does not specify what PADC assistance to victims shall entail. While under PADC PADC has powers to *ex officio* collect evidence, including in proceedings brought by complainants,<sup>512</sup> the law does not define those powers as assistance to victims. In addition, the PADC provision on victim assistance specifies that assistance relates to the filing of a complaint, arguably not extending beyond filing a complaint.

Under PADC’s own regulations, its “Administrative-Legal Servicing” Directorate provides independent legal aid to discrimination victims.<sup>513</sup> The regulations do not specify what that assistance entails.

Under those regulations, PADC’s “regional representatives” provide “methodical” help (probable intended meaning, methodological) and independent consultations to “citizens and natural persons” regarding PADC.<sup>514</sup> The regulations do not specify what those help and consultations entail.

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<sup>511</sup> Article 47.9 PADC.

<sup>512</sup> Articles 55-57 PADC.

<sup>513</sup> Article 20 (1.1) Regulations on the Structure and Activities of the Protection Against Discrimination Commission.

<sup>514</sup> Article 23 (2.1) Regulations on the Structure and Activities of the Protection Against Discrimination Commission.

PADC has stated that its central office employees, as well as its 21 operational regional representatives assist complainants by explaining what PADC's powers are, how its proceedings are structured, what a complaint must look like in order to be admissible, how an irregular complaint is to be fixed, what proof is to be adduced, etc.<sup>515</sup> Regional representatives help parties obtain copies of documents in their cases, inspect collected evidence, enquire about the stage proceedings are at.<sup>516</sup> Victims are given an opportunity to inspect case files, including collected evidence, in PADC regional offices, sparing them the cost of travelling to the PADC central office in the capital city, Sofia, where PADC proceedings take place.<sup>517</sup>

Regional representatives consult persons in PADC regional offices in regional capital cities, during on-site consultations in municipalities, or in individual's homes by prior appointment (for persons with disabilities).<sup>518</sup> PADC regional representatives are said to be available for the range of questions interested parties might have on using PADC remedies.

Under PADC, PADC proceedings are tax-free, and a losing party bears no procedural expenses.<sup>519</sup> PADC relies on this as an aspect of victim assistance. However, in court proceedings for judicial review of PADC decisions, PADC as a matter of course claims, and is awarded, court expenses against a losing party, including a complainant.

- Independence

As mentioned, PADC victim assistance at the regional and municipal levels is questionable in terms of practical independence, as PADC regional representatives who provide that assistance are hosted free of charge by regional and local governments and receive pro bono logistical support by mayors' administrations.

- Effectiveness

In 2016, PADC reportedly consulted 1058 individuals in its central office, in person and over the telephone.<sup>520</sup> That year, its regional representatives reportedly conducted 638 on-site consultations in municipalities, servicing 1403 persons.<sup>521</sup> PADC has reported a total of 3472 persons consulted in its regional offices in 2016.<sup>522</sup> In 2015, PADC has reported receiving 216 e-mail queries to which it produced 224 replies, and 1147 persons consulted over the telephone.<sup>523</sup> In 2014, PADC has reported having consulted 1097 persons, in person and over the telephone.<sup>524</sup>

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<sup>515</sup> Information delivered by PADC to the author of this report on 16 February 2018.

<sup>516</sup> 16 February 2018 PADC replies to questions by the country expert for purposes of the present questionnaire.

<sup>517</sup> Ibid.

<sup>518</sup> Ibid.

<sup>519</sup> Article 52 PADC.

<sup>520</sup> PADC Annual Report for 2016, p. 135, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>521</sup> 16 February 2018 PADC replies to questions by the country expert for purposes of the present questionnaire.

<sup>522</sup> Ibid.

<sup>523</sup> PADC Annual Report for 2015, p. 80, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet\\_2015\\_KZD.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf).

<sup>524</sup> PADC Annual Report for 2014, p. 74, at: [http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet\\_2014.pdf](http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf).



There appears to be no mechanism in place to evaluate the quality of victim consultation/ assistance provided by PADC. It is unclear what the professional qualifications and experience of PADC central and regional office employees providing victim assistance are. PADC provided no information on that when asked by the author of this report. It is further unclear how the numbers of PADC-reported victim consultations correlate to the demand for victim assistance. It is also unclear what is done to assist victims, other than persons with disabilities, who are deterred from seeking assistance due to social isolation. PADC claims of outreach being done are not specific, and no statistics are available.

- Resources

In terms of human resources at the regional and municipal levels, a single PADC employee services victim assistance in an entire region (Bulgaria's territory is divided into 28 regions), along with carrying out other PADC activities. That means that the human resources dedicated to victim assistance are inadequate.

There is no information available on the human resources specifically allocated to the assistance of victims at the central level.

There is no information available on the financial resources specifically allocated to the assistance of victims at the central or regional levels.

ii) Independent surveys and reports

In Bulgaria, the designated body, PADC, does have the competence to conduct independent surveys and publish independent reports. The law provides for that expressly.<sup>525</sup>

- Independence

PADC manifested a distinct lack of independence with regard to a 2011 PADC study that PADC publicly disowned after public and official backlash, as mentioned above in Section 7.c Institutional architecture. The study "National independent [PADC] study on stereotypes and prejudices in school textbooks, aiding materials, curricula and pre-school and primary school plans", published on PADC's website in 2012,<sup>526</sup> was construed by media as advocating for iconic Bulgarian writers' works to be removed from textbooks. In particular, a reference in the PADC study to a poem by Hristo Botev, symbolic national revolutionary poet, as an example of discriminatory portrayal of non-Bulgarians - "[...] But damn, mother, damn this Turkish black banishment that exiled us in your youth [...]" ("Но кълни, майко, проклинай таз турска черна прокуда, дето нас млади пропъди") - was considered outrageous by many. There was an outcry, and the then minister of education held two press conferences to assure everyone that iconic writers would not be abolished from the curricula. At the second press conference, held at the behest of the then and now prime-minister Borissov, the education minister declared on behalf of Borissov and the government that „anyone who allows themselves to fake our historical past will be viewed as a person encroaching on Bulgaria's national security”.<sup>527</sup> PADC then proceeded to publicly state that it had

<sup>525</sup> Article 47.10-11 PADA.

<sup>526</sup> At: [https://www.kzd-nondiscrimination.com/layout/images/stories/izsledwane\\_na\\_kzd/KZD-reshenie.doc](https://www.kzd-nondiscrimination.com/layout/images/stories/izsledwane_na_kzd/KZD-reshenie.doc).

<sup>527</sup> See media reports, inter alia at: <https://www.dnevnik.bg/bulgaria/2012/08/14/1887858 sergei ignatov botev ostava v uchebnicite/>;



no recollection/ record how the study was commissioned but that it was commissioned during the previous PADC members' term of office; and pulled the study from its website.<sup>528</sup> That incident is indication that PADC has not been independent in practice when carrying out its mandate to survey discrimination and publish its findings (and possibly its other mandates).

Furthermore, as a whole, PADC annual reports avoid any analysis of the current political/ social/ legal situation in terms of discrimination/ equality. Those reports focus instead on accentuating PADC's activities. That approach on the part of PADC is arguably part of a policy of avoiding controversies in parliamentary debates on PADC reports. Those parliamentary discussions and the ensuing parliamentary approval of PADC's reports are tied to subsequent parliamentary approval of PADC's annual budget for the following year. Avoiding controversy so as to minimize resistance to budget approval would be a marker of a lack of independence.

- Effectiveness

In PADC's practice, publishing independent reports has largely been taken to mean publishing PADC's annual reports to Parliament on its own activities. Those reports have not contained information resulting from any surveys of discrimination since 2009. In practice, PADC has carried out few surveys of discrimination/ inequalities. It only reports 5 studies over the course of its 14 year-long existence.<sup>529</sup> Those studies mostly contain sociological data on prejudices against various vulnerable groups.<sup>530</sup>

As a whole, PADC (findings from its) studies lack public visibility or influence. They are not an established cited authority. They are not clearly visible on its website, or easily findable elsewhere online. In PADC annual reports to Parliament, the information given on its survey findings is not substantive or specific. As mentioned, as a whole, PADC annual reports avoid any analysis of the current political/ social/ legal situation in terms of discrimination/ equality. Those reports focus on accentuating PADC's activities.

- Resources

PADC has not reported any comprehensive or specific information on the financial or human resources allocated to producing its studies. In response to a question on this subject, PADC has merely stated that the funding for its five reports mentioned above was external to its budget and came from EU sources, and that the studies were done by sub-

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[https://www.dnevnik.bg/bulgaria/2012/08/16/1889323\\_kabinetut\\_posegatelstvoto\\_vurhu\\_istoriata\\_e\\_zaplah/](https://www.dnevnik.bg/bulgaria/2012/08/16/1889323_kabinetut_posegatelstvoto_vurhu_istoriata_e_zaplah/).

<sup>528</sup> See media reports, inter alia at:

[https://www.dnevnik.bg/bulgaria/2012/08/17/1890029\\_komisiiata\\_sreshtu\\_diskriminaciata\\_se\\_otreche\\_ot/](https://www.dnevnik.bg/bulgaria/2012/08/17/1890029_komisiiata_sreshtu_diskriminaciata_se_otreche_ot/);  
<https://news.bg/bulgaria/ot-kzd-zashtitiha-skandalnoto-izsledvane-na-uchebnitsite-gotovi-sa-za-novo.html>.

<sup>529</sup> PADC information officially delivered to the author of this report on 16 February 2018. Those reports are: „Discrimination and impartial attitudes based on ethnicity, gender, sexual orientation, disability, age and belief" (2007); „Prejudices and discrimination against immigrants and refugees" (2009); „Prejudices and discrimination against minority children and children with disabilities in the educational system" (2009); "A survey and evaluation of the impact of the economic crisis and budget cuts on vulnerable groups" (2014); „A nationally representative sociological study on a territorial basis aiming at identifying and developing profiles of the groups and communities most affected by a risk of discrimination" (2016/2017).

<sup>530</sup> PADC information officially delivered to the author of this report on 16 February 2018.

contractors “of proven professional qualifications”, not specifying who they were, what their experience in the non-discrimination field was, or what procedure was followed to select them.<sup>531</sup> The studies have been, for the most part, assigned to sociological agencies, and on a few occasions, to NGOs and scientific organisations. PADC’s most recent study, „A nationally representative sociological study on a territorial basis aiming at identifying and developing profiles of the groups and communities most affected by a risk of discrimination” (2016/2017), was commissioned to the only sociological agency that applied for it under a public procurement procedure.<sup>532</sup>

If PADC employees, in addition to sub-contractors, are involved in producing/ contributing to PADC surveys, their numbers, or professional experience and qualifications are not documented/ public. PADC has reported no information on that.

### iii) Independent recommendations

In Bulgaria, the designated body, PADC, does have the competence to issue independent recommendations on discrimination issues. The law provides for that expressly.<sup>533</sup>

In PADC’s practice, it primarily issues recommendations to public bodies (both central and local) within the framework of its proceedings, hearing cases of discrimination. Recommendations have included amending discriminatory (secondary) legislation and internal regulations, as well as administrative practice, including architectural environments. PADC is also competent to issue injunctions, to public and private actors alike.<sup>534</sup>

In addition, outside the context of its adjudicating role, PADC provides opinions, possibly including recommendations, on draft legislation and policy within the framework of joint working groups with other public institutions.<sup>535</sup>

- Independence

There is no reliable data to assess whether PADC’s choices to make or not to make a recommendation, and what to recommend and to whom, are possibly affected by internalized dependence resulting from members’ and employees’ inadequate personal integrity or professional qualifications, non-transparent selection procedures, or budget constraints. For instance, it is a matter of speculation whether PADC members and employees are independent in practice when considering what recommendations to issue to regional governors who provide PADC with office space free of charge, or to municipal mayors who provide logistical support for PADC local outreach free of charge.

- Effectiveness

In 2012, PADC reportedly made 53 recommendations and issued 45 injunctions.<sup>536</sup> In 2013, PADC reportedly made 58 recommendations and

<sup>531</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>532</sup> See PADC public procurement procedural documents at: <https://sop.bg/download/eeBmhTOehh/>; <https://sop.bg/download/eeBmOkBBCT/>.

<sup>533</sup> Article 47.6, 47.8 and 47.11 PADA.

<sup>534</sup> Article 42.2-4 PADA.

<sup>535</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>536</sup> PADC Annual Report for 2012, at: [http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/annual\\_report\\_2012Final\\_25.03.2013year.doc](http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/annual_report_2012Final_25.03.2013year.doc).

issued 36 injunctions.<sup>537</sup> For 2014, PADC has reported at least 53 recommendations and 28 injunctions (data is missing concerning the numbers issued by PADC Third Panel).<sup>538</sup> For 2015, PADC did not report statistics on its recommendations. For 2016, PADC has reported 35 decisions containing recommendations (possibly more than one per decision) and 14 decisions containing injunctions (possibly more than one per decision).<sup>539</sup>

While based on those figures PADC is relatively active in terms of making recommendations, no data is available to reliably assess the effectiveness or scale of this activity as substantive analysis is needed to establish the number of cases where a recommendation was warranted but was not made, to then compare to the number of cases a recommendation was actually made. Furthermore, given PADC's power to impose injunctions, its choices to make a recommendation instead in a larger number of cases also require substantive analysis to determine their level of justifiability. There is further no data on the rate of implementation of PADC recommendations, or on its policy and practice on securing implementation. It is unclear what PADC does if bodies ignore its recommendations.

- Resources

PADC members and employees involved in producing PADC rulings are charged with drafting recommendations as a part of those rulings as well. There is no public information on the specific numbers of those employees, or their professional qualifications or relevant experience. PADC staff dealing with drafting decisions, including recommendations, are employed in the "Specialised proceedings, analysis and prevention" Directorate (SPAPD) at PADC. This is the staff supporting PADC's member panels in deciding cases. It could be deduced that SPAPD numbers around 25 persons.<sup>540</sup> This conclusion derives from the fact that the "Specialised Administration" structural unit at PADC, where SPAPD is located, numbers 52 staff, including PADC regional representatives (possibly around 25 staff, of whom 21 regional representatives).

There is no information available on the financial resources specifically allocated to producing PADC recommendations.

iv) Other competences

PADC is foremost a quasi-judicial body, hearing, investigating, and deciding cases of discrimination, and imposing penalties and injunctions.<sup>541</sup> It is also competent to take and join court cases.<sup>542</sup> PADC is further competent to provide opinions on draft legislation and policy,<sup>543</sup> keep a public register on its decisions

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<sup>537</sup> PADC Annual Report for 2013, at: [http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/annual\\_report\\_kzd-2013.doc](http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/annual_report_kzd-2013.doc).

<sup>538</sup> PADC Annual Report for 2014, at: [http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet\\_2014.pdf](http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf).

<sup>539</sup> PADC Annual Report for 2016, p. 137, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>540</sup> Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Annex to Article 15 (1).

<sup>541</sup> Article 47.1-4,

<sup>542</sup> Article 47.5 PADA.

<sup>543</sup> Article 47.8 PADA.

and injunctions,<sup>544</sup> inform the public on existing equality law provisions,<sup>545</sup> as well as undertake other activities as stipulated under its own regulations.<sup>546</sup>

Its effectiveness and practical independence as an adjudicator may be affected by personal and professional incompetence and political ties resulting from non-transparent and arbitrary members and staff selection procedures, as well as budget constraints resulting in informal dependency on other public institutions, along with formal dependency on political actors in Parliament approving PADC's annual budget. In some cases, PADC has arguably rendered biased decisions in favour of politicians and officials. It has also unreasonably protracted proceedings in some such cases. For example, it handed down a decision in a case against an *Ataka* MP with a delay of three years.<sup>547</sup> While the respondent MP had used expressions, such as "canibals", "mass murderers", "raping, cutting heads", "Islamist lowlife", "head-cutters carrying out an Islamist colonisation", speaking on TV with regard to Syrian asylum-seekers, PADC held that the MP did not commit discrimination (harassment/ incitement to discrimination) on grounds of national origin, religion, or ethnicity. There is only anecdotal evidence,<sup>548</sup> and no representative data, to back those expert assessments.

v) Positive duties

Under PADA, central and local government bodies have a duty to take all measures that are possible and necessary to achieve the objectives of PADA.<sup>549</sup> Those bodies have a duty to take positive measures when it is necessary to achieve the objectives of PADA.<sup>550</sup> They shall give priority to positive measures necessary to equalise opportunities for victims of multiple discrimination.<sup>551</sup> The law provides for no role for PADC in relation to those duties.

g) Legal standing of the designated body

In Bulgaria, the designated body, the Protection Against Discrimination Commission (PADC), does have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court – possibly, subject to judicial interpretation;
- bring discrimination complaints ex officio to court – possibly, subject to judicial interpretation;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.<sup>552</sup>

In practice, however, PADC has not been using these powers, and they remain nominal. The reasons for that possibly include a lack of resources, financial and human, as PADC members and staff are occupied with producing their own case law and defending their decisions before two instances of administrative courts charged with judicial review. In addition, PADC members possibly prefer a less controversial adjudicator role to directly

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<sup>544</sup> Article 47.7 PADA.

<sup>545</sup> Article 47.12 PADA.

<sup>546</sup> Article 47.13 PADA.

<sup>547</sup> PADC Decision No. 163 of 22 April 2016 in case No. 352/ 2013.

<sup>548</sup> The case given as an example was represented by the author of this report.

<sup>549</sup> Article 10 PADA.

<sup>550</sup> Article 11 (1) PADA.

<sup>551</sup> Article 11 (2) PADA.

<sup>552</sup> Article 47.5 PADA: "[PADC] shall appeal against administrative acts in breach of this or other laws governing equal treatment, and shall bring claims before the court, and join, as an interested party, lawsuits brought under this or other laws governing equal treatment;"

opposing parties in court. There is no research to substantiate these tentative evaluations by the author of this report.

#### h) Quasi-judicial competences

In Bulgaria, the body is a quasi-judicial institution. Its decisions are binding. It has power to impose monetary sanctions, as well as to issue remedial and preventive injunctions. Arguably, the levels of monetary sanctions provided for under the law are not sufficient to deter companies other than small businesses.<sup>553</sup> PADC decisions are subject to judicial review before two instances of administrative courts, including the Supreme Administrative Court.

PADC does not publish representative data on its practices of following up on the implementation of its decisions. There are no statistics on the implementation rates of its decisions. In its annual reports to Parliament PADC only publishes “examples” of cases where it took some action to secure implementation, and the concerned party either implemented or did not implement the respective decision. PADC does not clarify in its reports whether those examples are representative. It only gives 4-5 examples per annual report whereas its decisions are hundreds per year. In some of those PADC-reported examples, when a PADC decision in a case enters into force, PADC sends out an invitation to the concerned party to implement the decision voluntarily.<sup>554</sup> In response, some parties send PADC financial evidence that they paid their fine,<sup>555</sup> or evidence that they complied with a remedial injunction, for instance, to create architectural accessibility (such as a purchase contract for a piece of equipment, for instance, or reconstruction building designs).<sup>556</sup> In one case where PADC ordered a respondent to adopt equality intra-institutional rules, to prove implementation, that party sent PADC a copy of those rules, along with a statement that the rules were posted in the company’s offices for employees to take note of.<sup>557</sup> In a case where PADC ordered a respondent Internet news company to moderate user comments in order to exclude hate speech, the respondent notified PADC that it undertook action to improve its automatic word filtering system.<sup>558</sup> It is unclear whether in that case PADC was satisfied with the company taking some action, or it insisted on a result.

In a case where the respondent organisation only informed PADC that its management were notified of the PADC decision ordering respondent to reform its ageist job competition rules, PADC has not reported having taken any further action to demand substantive implementation.<sup>559</sup> In some cases, PADC appears to accept statements by respondents that a PADC decision was implemented lacking any specificity as to the measures taken, or proof.<sup>560</sup>

In some cases, PADC has reported having sent the respective entity an invitation for voluntary implementation, and when no implementation followed, PADC reported no further PADC action.<sup>561</sup>

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<sup>553</sup> Under Article 78 (1) PADA, the maximum fine for a breach of equality law is BGN 2000 (EUR 1000).

<sup>554</sup> See PADC Annual Report for 2016, pp. 137-139, available in BG at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>555</sup> Ibid.

<sup>556</sup> Ibid. See also PADC Annual Report for 2015, pp. 81-83, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet\\_2015\\_KZD.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf).

<sup>557</sup> PADC Annual Report for 2015, p. 81-83, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet\\_2015\\_KZD.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf).

<sup>558</sup> Ibid.

<sup>559</sup> PADC Annual Report for 2014, стр. 74-79, at: [http://kzd-nondiscrimination.com/layout/images/stories/2015/godishnotchet2014/Otchet\\_2014.pdf](http://kzd-nondiscrimination.com/layout/images/stories/2015/godishnotchet2014/Otchet_2014.pdf).

<sup>560</sup> Ibid.

<sup>561</sup> Ibid.

Because there is no statistical data on the rates of implementation of PADC decisions, it is unclear whether PADC decisions are respected.

There is no public information on the numbers or professional qualifications of the staff in charge of follow-up on implementation of PADC's decisions.

i) Registration by the body of complaints and decisions

In Bulgaria, the body does register the number of inquiries received, complaints of discrimination made, and decisions. However, it doesn't methodically break the data down by ground, field, type of discrimination, etc. For instance, in the PADC annual reports for 2016 and 2014, the data are only broken down by specialized panel (each dealing with more than one ground), and not by specific ground, field, form of discrimination, or other criteria. Those PADC statistics are available to the public. PADC publishes the data in its annual reports to Parliaments, which are accessible on its website after Parliament approves them (which it sometimes delays). In accordance with the State Administration Act, PADC reportedly operates a case-filing informational system.<sup>562</sup> In accordance with requirements under PADA, PADC reportedly keeps a public register of its final decisions and injunctions.<sup>563</sup>

In 2012, PADC reportedly received 823 complaints, instituted 336 proceedings, and delivered 286 decisions.<sup>564</sup> In 2013, PADC reported 860 complaints, 454 proceedings instituted, and 325 decisions delivered.<sup>565</sup> In 2014, PADC reported 586 complaints and 74 third-party motions, 452 proceedings instituted, and 325 decisions delivered.<sup>566</sup> In 2015, PADC reported 693 complaints and 86 third-party motions, 474 proceedings instituted, and 476 decisions delivered.<sup>567</sup> In 2016, PADC reported 938 complaints and 46 third-party motions, 368 proceedings, and 510 decisions.<sup>568</sup> As mentioned in the preceding paragraph, the PADC data for 2016 is not disaggregated by specific ground, field, or form of discrimination. It is only broken down by specialized PADC sitting panel, and each panel deals with more than one protected ground.

In 2015, 41 proceedings concerned age, 3 – faith, 7 – nationality, 88 – ethnicity, 3 – race, 25 – gender, 5 – national origin, 4 – origin, 17 – religion, 4 – sexual orientation, 27 – belief, 108 – disability.<sup>569</sup> The rest dealt with property/ personal/ family/ social status, education, political affiliation, trade union activity, human genome, and sexual harassment and labour rights (the latter two counted as protected grounds by PADC). According to PADC, 160 cases dealt with multiple discrimination.<sup>570</sup>

It is not clear what the difference is between 'faith' and 'religion' in the above categorization by PADC. There is information on that in its report for 2015.

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<sup>562</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>563</sup> Article 47.7 PADA.

<sup>564</sup> PADC Annual Report for 2016, p. 136, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>565</sup> PADC Annual Report for 2016, p. 136, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>566</sup> PADC Annual Report for 2016, p. 136, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>567</sup> PADC Annual Report for 2016, p. 136, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>568</sup> PADC Annual Report for 2016, p. 135, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>569</sup> PADC Annual Report for 2015, p. 81-83, at: [http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet\\_2015\\_KZD.pdf](http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf).

<sup>570</sup> Ibid., p. 79.

No data is available for 2017, as the PADC report for 2017 is not yet published.

j) Planning

PADC has no strategic or annual work plan. It does make an annual report for Parliament to consider. That report is published on PADC's website after Parliament approval.

There has been no evaluation of the implementation of any PADC plan, as PADC has had no plan.

k) Stakeholder engagement

PADC has reported informal cooperation with trade unions, national and European NGOs, employers' organisations, central and local government authorities, and universities.

In 2014, PADC under an unspecified procedure entered into a "cooperation agreement" with the "Podkrepa" trade union, resulting in PADC being given two office rooms by the latter.<sup>571</sup> Other examples for trade union cooperation include a joint project on producing a case law collection, and joint attendance at meetings and seminars.<sup>572</sup> In 2016, PADC reportedly consulted 4 trade unions on equality rights and remedies.<sup>573</sup> It has reported having "cooperation agreements" with other trade unions as well.

PADC's cooperation with employers' organisations (such as the Bulgarian Industrial Association, the Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Capital Association, etc.) seems to consist of joint attendance at roundtables and seminars.<sup>574</sup> In addition, in 2016, a PADC regional representative made presentations on PADA before employees of several private businesses.<sup>575</sup>

PADC's cooperation with national NGOs includes PADC providing information regarding its practice and case law to NGOs drafting various reports; joint attendance at seminars and similar; PADC regional representatives consulting local NGOs on PADA.<sup>576</sup> PADC reports cooperation with minority NGOs (religious, Roma, persons with disabilities, LGBT, gender), but specific examples of joint activities are lacking.<sup>577</sup> There are no statistics and almost no specific examples (for instance, the only example for cooperation with a Roma NGO in 2016 was PADC hosting Roma child carol singers in its offices).<sup>578</sup> There is no information concerning any criteria PADC uses to determine which NGOs to cooperate with.

PADC's cooperation with central public authorities includes participation in working groups and meetings to draft legislation and policies, as well as Bulgaria's reports to international bodies on implementation of human rights instruments; providing other bodies with information on PADC's practice and case law; participation in various consultative bodies.<sup>579</sup>

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<sup>571</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>572</sup> Ibid.

<sup>573</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>574</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>575</sup> PADC Annual Report for 2016, p. 132, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>576</sup> PADC Annual Reports for 2015 and 2016, p. 151, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>577</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>578</sup> PADC Annual Report for 2016, p. 146-151, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>579</sup> PADC information officially delivered to the author of this report on 16 February 2018.



PADC's cooperation with local public authorities includes: PADC receiving free office space from regional governors to host PADC regional representatives; participation by PADC regional representatives in regional government councils on ethnic and demographic issues (nominal consultative bodies); PADC receiving logistical support by municipal administrations, each having appointed a contact person (a total of 265 employees) to assist the relevant PADC regional representative in organising on-site visits to provide equality law consultations to interested individuals; joint attendance at seminars and similar.<sup>580</sup>

PADC's cooperation with universities includes hosting visits by history and ethnology students to PADC offices, and explaining equality law rights and remedies to them, as well as PADC members delivering presentations at universities.<sup>581</sup> PADC reports having entered into cooperation agreements for similar activities with 9 universities.<sup>582</sup>

There is no data on which to base an assessment of the effectiveness of PADC's stakeholder cooperation. PADC appears active networking, at the regional, as well as the central level, but what the outcomes are is not clear. For instance, Bulgarian trade unions are not an actor on the equality scene, and PADC does not seem to have influenced their policies towards making use of PADC remedies for the protection of underprivileged worker groups.

PADC has ethnic minority members pursuant to PADA, Article 41 (3): "In electing or appointing [PADC] members the principles of balanced participation of women and men, and of persons belonging to ethnic minorities, shall be adhered to". There are no further rules governing the exercise of Parliament's or the President's member selection discretionary powers in that respect. Under rules adopted by Parliament and the President in 2017 governing nominations and selection procedures for PADC members, no mention is made of persons belonging to ethnic minorities. The only substantive criterion under both sets of rules is having "knowledge and experience in human rights protection" pursuant to Article 42 (1.2) PADA. Under the President's rules, NGOs and individuals have standing to nominate candidates. Accordingly, ethnic communities now have a channel through which to propose their own representatives. However, the President's discretion in choosing among proposed candidates remains legally unfettered and non-transparent. The newly adopted rules do not govern the making of the presidential choice, nor do they require articulating reasons for it; they exclusively govern the nominating of candidates. Under Parliament's new procedure, only MPs and parliamentary groups have standing to propose candidates. For a full description of both procedures, see below in Section 10.

#### l) Accessibility

PADC's central office in the capital city, Sofia, is fully accessible for wheelchair users. (A current member of PADC is a wheelchair user himself.) However, that office is away from the city centre, and far from the central bus and train stations. Its entrance is not visible from the street, and the street is not used by many pedestrians.

PADC does have regional offices in 21 regional cities, usually located centrally, in the regional government's building. It is not clear whether those offices are accessible for persons with disabilities and other persons with mobility issues.

PADC has no procedures in place to identify and respond to complainants' access needs. It reports that its staff, including its regional representatives, use "informal methods and approaches" to assess special access needs.<sup>583</sup> There is no data to assess the effectiveness of this practice. PADC regional representatives are said to frequently visit persons with

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<sup>580</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>581</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>582</sup> Ibid.

<sup>583</sup> PADC information officially delivered to the author of this report on 16 February 2018.



disabilities in their homes to consult them on equality rights and remedies.<sup>584</sup> There is no number available as to that frequency.

PADC's 21 regional representatives – one employee per regional office, consult potential complainants on equality rights and remedies in PADC regional offices (21 across the country), and conduct outreach in their region's municipalities by holding planned on-site day consultations for interested individuals. For that purpose, PADC reports having a correspondent in each municipal administration helping the PADC regional representative organise on-site consultations in the respective municipality. In 2016, PADC reports 638 on-site consultations conducted in various municipalities, and 1403 individuals consulted.<sup>585</sup> In 2015, 567 on-site consultations were conducted in municipalities, with 1232 individuals consulted.<sup>586</sup> In 2014, 556 on-site consultations were conducted in municipalities, and 1642 individuals were consulted.<sup>587</sup>

In 2016, PADC staff consulted a total of 5933 persons: 1058 in PADC central office and by telephone; 3472 in PADC regional offices; and 1403 on-site in municipalities.<sup>588</sup> In addition, 208 persons were consulted by e-mail.<sup>589</sup>

PADC has not reported any measures to accommodate access for persons with caring responsibilities, people speaking different languages, or people with literacy issues.

Under the case law of the Sofia City Administrative Court, appeals against PADC decisions are heard by administrative courts servicing the region where the complainant is based and where PADC has a regional representative.<sup>590</sup> This saves complainants travels to Sofia. PADC proceedings are tax-free.

There is not sufficient data to assess the manner in which PADC responds to special access needs.

#### m) Roma and Travellers

PADC does not treat Roma as a priority. PADC has stated that it does not have designated, additional funding to treat Roma as a priority.<sup>591</sup> While it reports having undertaken to conduct on-site consultations in municipalities with sizeable Roma populations, and a national media campaign targeting hate speech, it is unclear whether or to what extent such activities have actually been implemented. PADC reports that most Roma-based complaints it deals with concern hate speech in the media, which in practice means that most of those complaints are brought by Roma rights activists in the public interest as opposed to direct victims of practical discrimination (less favourable treatment in healthcare, education, social services, etc.).

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<sup>584</sup> Ibid.

<sup>585</sup> Ibid.

<sup>586</sup> Ibid.

<sup>587</sup> Ibid.

<sup>588</sup> PADC Annual Report for 2016, p. 135, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf>.

<sup>589</sup> Ibid.

<sup>590</sup> PADC information officially delivered to the author of this report on 16 February 2018.

<sup>591</sup> Ibid.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

#### a) Dissemination of information

Information action taken by Bulgaria has been limited. Two bodies, mostly, have taken such action – PADC and the National Council for Cooperation on Ethnic and Integration Issues (formerly, National Council for Cooperation on Ethnic and Demographic Issues (NCCEII)) within the Council of Ministers, and it has consisted in superficial and insufficient general awareness raising measures. In past years, PADC has broadcast advertisements on the radio and television, and disseminated advertising brochures at seminars. Its members have given interviews to the media and carried out seminars in various cities. PADC carried out a seminar for journalists in early 2014. PADC also claims to regularly inform journalists of pending cases and hearings.<sup>592</sup> According to its 2016 report: „Every week more than 170 reporters with national and regional media were given information about upcoming PADC hearings.”<sup>593</sup>

PADC further reports responding to media queries about the numbers of complaints and third-party motions, the prevalence of certain protected grounds or fields, the number of decisions, incl. precedents.<sup>594</sup> PADC representatives gave media interviews, describing PADC’s overall activities, its quasi-judicial functions, the possibilities for individuals to be assisted centrally and regionally.<sup>595</sup>

In recent years, according to its website, PADC implemented a one-year PROGRESS-funded project that ended on 31.05.2014. Its main objectives included dissemination of information regarding EU and national anti-discrimination legislation. Seminars were organized for legal practitioners, Ministry of Interior officials, educators, journalists.

There has been no community outreach. The media used have been the mainstream ones that may be inaccessible to isolated communities, such as Roma and people with sensor impairments, and the groups targeted by seminars have been predominantly people from the mainstream (officials, journalists, establishment-connected NGOs).

#### b) Dialogue with NGOs

PADC has not involved NGOs in cooperation or dialogue in any inclusive or meaningful way. In the past, it engaged in selective contacts with some NGOs on a non-transparent basis, excluding others. There is no mechanism for NGOs to provide PADC with their input on the law or practice, other than joining individual cases in an ‘interested party’ capacity (on discretionary permission by PADC). PADC has not engaged important, if any, NGOs in consultations regarding amendments to the legislation it has reportedly initiated. None of the amendments to PADA were consulted with NGOs.

#### c) Dialogue between social partners

No such action is on record.

Effectively, there is no body appointed on the national level to address Roma issues. Allegedly, a *Council for Roma Integration* within the Ministry of Labour and Social Policy was set up in 2006 to support the National *Roma Decade* Coordinator, meeting every 3

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<sup>592</sup> Letter No 12-10-34 of 13 July 2015 addressed to a Bulgarian Helsinki Committee representative.

<sup>593</sup> PADC 2016 Report, p. 177, at: <http://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Отчет%202016.pdf>.

<sup>594</sup> Ibid.

<sup>595</sup> Ibid.

months. It is said to include 29 representatives of Roma NGOs. The existence, activities or results of this body are not known.

Within the Ministry of Culture there is said to be a *Roma Public Council on Cultural Issues* assisting the Ministry's policy of cultural integration of minorities.<sup>596</sup> There is no information on activity by this council. In late 2009, the then Minister confirmed during parliamentary control, that such a body existed.<sup>597</sup> Its existence is, at best, nominal.

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Mechanisms**

Under general legal principles, PADA as *lex specialis* more recent/primary law should override general/ older/ secondary legislation that conflicts with it. However, in practice, this depends on judicial interpretation. A judge may consider that it is not PADA, but the other, conflicting rule that is *lex specialis* in the case, even if it's older (or secondary). There is no special mechanism to ensure that any discriminatory norms are set aside, other than litigation before the courts or PADC, the equality body. However, in 2014, the Supreme Administrative Court introduced a new, restrictive interpretation to the effect that PADC was incompetent to declare a norm discriminatory.<sup>598</sup> First, the Constitutional Court (CC) had to declare it unconstitutional (concerning primary law), or the administrative courts repeal it under general administrative procedure (concerning secondary legislation). However, standing to bringing such proceedings is limited: no individual can seize the CC, and only affected persons can seek judicial review of secondary legislation.

In 2012, a provision was introduced in PADA, requiring all public authorities, including local governments, to respect the aim of not allowing any direct, or indirect discrimination, when drafting legislation, as well as when applying it.<sup>599</sup> This general mainstreaming duty complements the original duty under PADA for all public authorities to take all possible and necessary measures to achieve the aims of PADA.<sup>600</sup> Formally, this provides sufficient legal basis for bodies to revise any legislation that contradicts PADA. In practice, this has not been done. A failure to do so could be challenged before PADC on general non-implementation grounds under PADA, there being no special provision on sanctions referring to this particular duty. PADC could then, under PADA, make a declaration, and impose a sanction, as well as issue an instruction, or recommendation for implementation. However, in 2014, the Supreme Administrative Court introduced a new, restrictive interpretation to the effect that PADC could not hold liable or sanction any public bodies.<sup>601</sup> It could only make recommendations to such bodies.

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<sup>596</sup> Based on information published at the Ministry of Culture's Internet site at: <http://mc.government.bg/page.php?p=13&s=24&sp=0&t=0&z=0> (in BG).

<sup>597</sup> Available at: <http://www.parliament.bg/bg/plenaryst/ns/7/ID/651> (in BG).

<sup>598</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013; and Decision No. 15637 in case No. 1925/2014.

<sup>599</sup> PADA, Article 6 (2).

<sup>600</sup> PADA, Article 10.

<sup>601</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013; and Decision No. 15637 in case No. 1925/2014.

b) Rules contrary to the principle of equality

There are various rules in primary and secondary legislation that contradict PADA.<sup>602</sup> A major effort is required to ensure that all laws and regulations are brought into conformity with the principle of equality.<sup>603</sup>

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<sup>602</sup> Examples of directly discriminatory legislation: Judiciary Act (*Закон за съдебната власт*), Article 162 (mental health related disability ("mental illness") bar (<https://www.lex.bg/laws/ldoc/2135560660>) (in BG); Higher Education Act *Закон за висшето образование*, Article 4 (unfettered discretion for universities to differentiate on grounds of age, race and sex, inter alia) (<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan016453.pdf>); Defence and Armed Forces Act, Article 141 (age bars to employment) (<http://www.comd.bg/en/acts/republic-bulgaria-defence-and-armed-forces-act>); Ministry of the Interior Act, Article 155 (age and health bars to employment, referring to an ordinance by the Minister) (<https://www.lex.bg/laws/ldoc/2136243824>) (in BG); Diplomatic Service Act (*Закон за дипломатическата служба*), Article 27 (mental disability ("chronic psychic illness") bar) (<http://www.lex.bg/bg/laws/ldoc/2135565718>) (in BG); Classified Information Protection Act (*Закон за защита на класифицираната информация*), Article 40 (mental disability ("psychic illnesses") bar) (<https://www.lex.bg/laws/ldoc/2135448577>) (in BG); Access and Disclosure of Documents and Declaration of Affiliation of Bulgarian Nationals with State Security [...] Act (*Закон за достъп и разкриване на документите и за обявяване на принадлежност на български граждани към Държавна сигурност [...]*), Article 6 (mental disability ("psychic illness") bar to access to employment) (<http://www.comdos.bg/media/Normativna%20osnova/ADDAABCSSISBNASA-15.02.2013.doc>); Norms which discriminate indirectly would be far more numerous and time-consuming to identify.

<sup>603</sup> The whole body of legislation, including statutory law and secondary legislation, should be reviewed and analysed for incompatibilities with PADA. Careful thinking should be done to devise ways to harmonize conflicting norms with PADA. This will not only require conflicting norms to be amended or repealed, but also PADA to be revised in order to allow for additional legitimate exceptions.

## 9 COORDINATION AT NATIONAL LEVEL

A number of structures exist within the executive, with mandates to promote and/or implement equality. Some are public bodies, some are joint governmental-civil society consultative councils. The latter make no decisions but are meant to inform decision-making processes. Some of the bodies are specialized in one or more grounds in one or more fields, while others are grounds-inclusive in specific fields. The relationships between the various authorities' mandates are not clear and there is overlap. Their relevance for the directives' implementation is limited, at best. They are mentioned for exhaustiveness.

In 2013, the Council of Ministers set up a *National Human Rights Coordination Mechanism* (NHRCM). The NHRCM aim is to "contribute to better implementation of the country's obligations before international monitoring and control mechanisms."<sup>604</sup> This body is expected to improve coordination between state agencies and independent human rights bodies by distributing tasks relative to international human rights reporting duties. It is further meant to discuss the expediency of Bulgaria's joining international human rights instruments, and to propose legislative changes relevant to human rights. The NHRCM sits twice yearly, chaired by the Foreign Affairs Minister, with participants from national human rights institutions, executive bodies and NGOs. In practice, it is an ineffective body, with no real output. NGO representatives are not allowed to take part in discussions, and may only sit as listeners.

Within the Council of Ministers, the *National Council for Cooperation on Ethnic and Integration Issues* (NCCEII) is a consultative body with a mandate to assist governmental policy on minorities, and to coordinate between the government and minorities' NGOs.<sup>605</sup> NCCEII is comprised of senior public officials and ethnic minority NGO representatives. Its tasks include promoting ethnic equality, and studying the specific problems facing ethnic minorities.<sup>606</sup> NCCEII "coordinates the implementation, and carries out ongoing monitoring regarding the National Strategy of the Republic of Bulgaria for Roma Integration (2012-2020)" and the action plan for that strategy's implementation.<sup>607</sup> At regional level, there are *27 councils on ethnic and integration issues*, local versions of NCCEII. These are comprised of regional and local government representatives, regional communal services suppliers, NGOs, and municipal 'ethnic issues' experts. Similar consultative councils also exist at municipal level.

Under the Minister of Education, there is a *Centre for Educational Integration of Children and Students from Ethnic Minorities*. Its task is to assist the Ministry of Education in implementing educational integration of minority students.<sup>608</sup> It develops and funds projects promoting ethnic minority students, equal access to education.<sup>609</sup> It fundraises from donor institutions, and a subsidy from the Ministry of Education's budget.<sup>610</sup>

Within the Ministry of Labour and Social Policy (MLSP), the *Policy for Persons with Disabilities, Equal Opportunities and Social assistance* Directorate develops policy and programmes for vulnerable groups.<sup>611</sup> At MLSP, there is also there a *Social Inclusion* Directorate.<sup>612</sup>

<sup>604</sup> See a brief report on the government's website: <http://www.mfa.bg/bg/events/6/1/6109/index.html> (in BG).

<sup>605</sup> Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues, Article 1 (<https://www.lex.bg/laws/ldoc/2135541318>) (in BG).

<sup>606</sup> Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues, Article 2 (1.5) (<https://www.lex.bg/laws/ldoc/2135541318>) (in BG).

<sup>607</sup> See at: [https://iisda.government.bg/ras/executive\\_power/council/222](https://iisda.government.bg/ras/executive_power/council/222) (in BG).

<sup>608</sup> Decree N 4 of the Council of Ministers of 11 January 2005 establishing CEICSEM, Article 1.

<sup>609</sup> Decree N 4 of the Council of Ministers of 11 January 2005, Article 2.

<sup>610</sup> Decree N 4 of the Council of Ministers of 11 January 2005, Article 9.

<sup>611</sup> Information on the Ministry of Labour and Social Policy's Internet site at:

<http://www.mlsp.government.bg/index.php?section=POLICIESI&lang=eng&I=306> (in BG).

<sup>612</sup> Administrative Registry, State Administration Information System (in BG), at:

[http://iisda.government.bg/ras/executive\\_power/ministry\\_organigram/87?verId=171205000000003000](http://iisda.government.bg/ras/executive_power/ministry_organigram/87?verId=171205000000003000).

The *National Council on Integration of People with Disabilities* is a similar consultative body.<sup>613</sup> Its tasks include: assisting the implementation of the policy for integration of people with disabilities; studying and analysing disabled people's needs, and making proposals for action to authorities, organizations, and commercial entities; giving opinions on draft legislation for disabled people's integration; facilitating the coordination between authorities and other organizations, and the organizations of, and for people with disabilities; interacting with other consultative bodies and disability NGOs and international organizations; raising public awareness of disability issues.<sup>614</sup>

The *Agency for People with Disabilities*, an executive body within MLSP is charged with implementing the public policy of integration of people with disabilities.<sup>615</sup> Its tasks include: creating and maintaining a database on people with disabilities; keeping a register of the specialized enterprises and cooperatives of people with disabilities; developing programmes and funding projects for stimulating economic initiatives for the benefit of people with disabilities; developing programmes and funding projects for social integration of people with disabilities; awarding employers funds for accommodating working places to disabled people's needs; giving opinions on draft legislation pertaining to disability; reporting annually on the measures for disabled people's integration.<sup>616</sup>

There is no governmental structure to deal with sexual orientation policy. There is also no department dealing with equality/non-discrimination issues relating to religion/ belief.

There is no anti-racism or anti-discrimination National Action Plan.

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<sup>613</sup> Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, adopted 17 December 2004, establishing NCIPD, Article 2 (<https://www.lex.bg/laws/ldoc/2135497189>) (in BG).

<sup>614</sup> Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, Article 3 (<https://www.lex.bg/laws/ldoc/2135497189>) (in BG).

<sup>615</sup> Structural Regulations of the Agency for People with Disabilities, Article 2 (1) (<https://www.lex.bg/laws/ldoc/2135497051>) (in BG).

<sup>616</sup> Structural Regulations of the Agency for People with Disabilities, Article 2 (1) (<https://www.lex.bg/laws/ldoc/2135497051>) (in BG).

## 10 CURRENT BEST PRACTICES

In 2017, when a new set of PADC members was to be elected, respectively, appointed, by Parliament and the President, both Parliament and the President adopted, for the first time, rules to govern the nominating of candidates for PADC members.<sup>617</sup> Prior to that, since 2004, selections had been taking place informally, the institutions exercising unfettered discretion, transparency, accountability and public participation lacking altogether.

While the President's rules only govern the nominating of candidates, Parliament's rules govern, in addition, procedures whereby all information relative to candidates' nominations is published on an especially created website,<sup>618</sup> and candidates are heard and voted on in open sessions.

### Parliament's procedure

Members of Parliament and parliamentary groups have standing to nominate candidates. Written reasons are required to substantiate a candidate's "high professional and moral qualities". The substantive criterion is the one provided for under PADA (Article 42 (1.2)): "knowledge and experience in the field of human rights protection". All nominations along with accompanying documents are published on the special site mentioned above at least 7 days before the hearing of candidates. Registered public interest NGOs may give opinions on candidates and submit questions to be posed during the hearing. The media may also submit questions. All opinions and questions are published on the special site. The parliamentary Denominations and Human Rights Commission (DHRC), responsible for the candidates' hearing, then has all candidates examined by the relevant institution regarding ties to the former Communist State Security, and publishes the results on the special site.

Candidates are heard in an open DHRC session, broadcast live on the special site. Candidates are introduced by those who nominated them (up to 3 minutes). Candidates are heard on their plans as a PADC member (up to 7 minutes). The DHRC chair presents all opinions and questions by NGOs and the media. Candidates respond to those (up to 5 min.). MPs may ask questions (up to 2 min. per question). Candidates respond (up to 5 min.). Complete minutes are kept, and then published on the special site. The DHRC makes a report on the hearing, and files it with Parliament along with a proposed decision regarding each candidate. Parliament holds a plenary session broadcast live on the special site, with the candidates present. The DHRC report is heard, candidates are discussed, and voted on individually. Voting is by open ballot. Simple majority is sufficient.

### The President's procedure

Public bodies, central as well as local government, NGOs and individuals may propose candidates. Written reasons regarding a candidate's "high professional and moral qualities" and "knowledge and experience in the field of human rights protection" are required. A committee formed by the President's administration reviews the candidates, and makes a report to the President, including reasoned proposed decisions. Information concerning candidates who are considered eligible under PADA is published on the President's website. The information remains accessible for 7 days. The President makes a discretionary decision taking into account the information gathered and the committee's opinion.

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<sup>617</sup> See Parliament's rules here: <http://www.parliament.bg/pub/cW/20170712024906reshenie.pdf> (in BG). See the President's rules here (in BG): <https://www.president.bg/news3839/prezidentskata-institutsiya-utvardi-pravilata-za-nominirane-na-kandidati-za-chlenove-na-komisiyata-za-zashtita-ot-diskriminatsiya-ot-kvotata-na-darzhavniya-glava.html> (<https://www.president.bg/docs/1499352591.pdf>).

<sup>618</sup> Available at: <http://www.parliament.bg/bg/KZD2017>.



## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives (if any)

#### *The law*

- The definition of incitement to discrimination, including instructions to discriminate, under PADA expressly requires direct intent.
- The definition of racial segregation under PADA expressly requires the state of separation to be 'forced'.<sup>619</sup> The European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.<sup>620</sup>
- PADA defines indirect discrimination in an unclear and confusing way.
- Parallel to PADA, pre-existing abstract bans on discrimination are in place under other laws. There is no coherence between PADA and those older bans, with differences in protected grounds, exceptions, and definitions.
- There is inconsistency between PADA and other directly or indirectly discriminatory norms.

#### *The case law*

In 2014, the Supreme Administrative Court (SAC), the final instance reviewing PADC decisions, made a number of new, restrictive requirements for PADA enforcement that contradict PADA, as well as EU law.<sup>621</sup> Specifically, those holdings contradict: Article 2.1 of Directive 2000/43/EC and Article 2.1 of Directive 2000/78/EC that ban *all* discrimination; Article 7.1 of Directive 2000/43/EC and Article 9.1 of Directive 2000/78/EC that require ensuring protection for *all* victims; as well as CJEU's ruling in the Firma Feryn case.<sup>622</sup>

- PADC could not declare every breach of PADA and other equality laws a breach, or sanction it: only those breaches that met the definition for an administrative breach under the general Administrative Breaches and Sanctions Act. That required establishing a concrete action/ omission, a concrete perpetrator, a concrete victim, and guilt.
- A concrete victim needed to be identified. Discrimination, in order to be found, had to be a concrete fact, and not a hypothetical possibility.<sup>623</sup>
- A perpetrator could only be a natural person. Legal persons could be perpetrators only exceptionally, in cases expressly provided for by law.
- A public authority could not be a perpetrator – only an individual exercising its competence.
- A legal provision could not constitute discrimination as it was not a concrete action/ omission. The adoption of a legal provision was not a concrete action/ omission either.
- PADC could not declare laws to be discriminatory: a law that was not declared unconstitutional by the Constitutional Court (CC) could not be discriminatory.
- PADC could not declare secondary legislation to be discriminatory either: such legislation that was not declared unlawful by SAC (under general administrative procedure) could not be discriminatory.
- Where PADC found a legal norm to contradict equality law, it could not declare a breach of the law. It could not order the responsible authority to repeal/ amend that

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<sup>619</sup> PADA, Additional Provision, § 1.6.

<sup>620</sup> For instance, *D.H. v. Czech Republic*, judgment of 13 November 2007; *Sampanis v. Greece*, judgment of 05 June 2008; *Orsus v. Croatia*, judgment of 16 March 2010 (GC).

<sup>621</sup> See Section 12.2.

<sup>622</sup> Judgment of the Court of 10 July 2008 in case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*.

<sup>623</sup> Supreme Administrative Court, Decision No. 15637 of 19 December 2014 in case No. 1925/2014. The case concerned the application of an age bar under secondary legislation.



norm. It could only make a recommendation, or take legal action before SAC (where secondary legislation is concerned).

This tendency has not been overturned with regard to all of the above propositions. However, in 2017, SAC ruled in at least five cases against public authorities, thereby recognising that public bodies can indeed be liable under PADA.<sup>624</sup> In addition, in two cases in 2017, SAC ruled on general grounds against legal persons contrary to the above proposition that legal persons are only liable in exceptional cases provided for by law.<sup>625</sup> In addition, in a 2017 case, SAC expressly rescinded the lower court's finding that the lack of a concrete victim meant that no discrimination was at hand.<sup>626</sup> SAC ruled that, in the case, inequality victimized a category of non-identified individuals. In addition, in the same case, SAC held that the violation resulted, in part, from the effect of legal norms, recognizing that legislation as such can indeed be discriminatory. Similarly, in another 2017 case, SAC confirmed a PADC finding that a piece of secondary legislation was discriminatory.<sup>627</sup>

On the other hand, in a different 2017 case, SAC held that considering whether a secondary legislation rule was discriminatory would constitute a form of incidental judicial review inadmissible within the framework of PADA proceedings, as the piece of secondary legislation in question was not contested under the due Administrative Procedure Code proceedings.<sup>628</sup> With this, SAC reiterated its controversial proposition above that discrimination provided for under legal rules is not discrimination. The case law remains contradictory and unstable.

In 2016, SAC confirmed a ruling by the lower-instance court that a legal person that was found liable for an act of discrimination could not incur a fine as under PADA, legal persons could only be sanctioned for not having complied with a specific duty under PADA, and not for having discriminated.<sup>629</sup> The lower-instance court repealed a financial sanction imposed by PADC, reasoning that PADC had not specified a duty under PADA that the company failed to comply with. The Sofia City Administrative Court (SCAC) held that under PADA, only natural persons could be fined for committing discrimination, and not legal persons. SAC confirmed that ruling.

SAC has held that, for discrimination to be at hand, a difference of treatment should be based *solely* on a protected ground, excluding „mixed motives“ cases where a protected characteristic was one among other reasons for less favourable treatment.<sup>630</sup> At the same time, SAC is inconsistent: in a recent case, it held that „discriminatory treatment is at hand regardless of whether a protected ground is the only, or one of the reasons for less favourable treatment.“<sup>631</sup>

As mentioned, SAC has applied the justification test only relevant for indirect discrimination to cases of less favourable treatment, i.e. direct discrimination. For instance, in 2017, in a case where a pupil with a disability was denied inclusion in a school trip because the teacher was uneasy about the disability, SAC agreed with the lower court's reasoning that the treatment was causally linked to a protected ground and not objectively justified by a

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<sup>624</sup> Decision No. 438 of 13 January 2017 and Decision No. 1630 of 8 February 2017, both against the Minister of Healthcare; Decision No. 7689 of 19 June 2017 against the Minister of Healthcare and the Minister of Labour and Social Policy; Decision No. 15961 of 22 December 2017 against the 'Execution of Punishments' General Directorate within the Ministry of Justice; Decision No. 6688 of 30 May 2017 against the Minister of Defence. See details concerning all decisions below in Section 12.2.

<sup>625</sup> Decision No. 8009 of 22 June 2017 and Decision No. 2171 of 21 February 2017. See details concerning both decisions below in Section 12.2.

<sup>626</sup> Decision No. 438 of 13 January 2017, see details below in Section 12.2.

<sup>627</sup> Decision No. 14631 of 30 November 2017 in case No. 4698/ 2016.

<sup>628</sup> Decision No. 6943 of 2 June 2017 in case No. 1980/ 2017.

<sup>629</sup> SAC Decision No. 13542 of 12 December 2016 in case No. 10756/ 2015.

<sup>630</sup> Supreme Administrative Court, *inter alia*, Decision No. 8277 of 11 June 2012 in case No. 3852/2012.

<sup>631</sup> Supreme Administrative Court, Decision No. 274 of 09 January 2012 in case No. 1319/2011.

legitimate aim.<sup>632</sup> Further, in another case decided in 2017, SAC directly invoked the PADA provision on direct discrimination (Article 4 (2)), reasoning that a difference of treatment would be justified by proportionality.<sup>633</sup>

In some cases, SAC has shown a serious lack of understanding of the concept of a comparator, holding that age requirements for access to employment did not constitute discrimination because they applied to all candidates, and not just the complainant.<sup>634</sup> In 2017, it discussed a case of dismissal on age-related grounds (the employee became a pensioner) in terms of comparing the complainant to other pensioners who the employer did not dismiss.<sup>635</sup>

SAC is struggling with the shifting burden of proof rule. In 2017, it ruled in one case that "[since] it was not established beyond a reasonable doubt that there were conduct and circumstances from which to make an inarguable conclusion of unequal treatment [...] it is not possible to substantiate an inference of [...] discrimination which is why there are no legal grounds to shift the burden of proof on the basis of Article 9 PADA".<sup>636</sup>

SAC has required intent, often holding expressly that "treatment [must be] carried out *knowingly* on one of the [protected] grounds".<sup>637</sup> As mentioned, in 2014, SAC held twice that only conduct that was "guilty" could qualify as a breach under PADA.<sup>638</sup> At the same time, its case law is contradictory: on one occasion in 2014, SAC held that "direct discrimination did not require discriminatory intent, therefore, the lack of such is irrelevant for qualifying treatment as discriminatory, including where it was based on an understanding that it was lawful".<sup>639</sup>

SAC has applied a medical approach to disability, considering employers' decisions as conditioned by medical opinion. In 2017, SAC justified a case of job applicant rejection (allegedly on race grounds) by referring to the fact that the job selection panel "unanimously ruled not to select V. for the [job] because of medical counter-indications given in the expert opinion. Subsequently, [they] requested an opinion from the labour medicine authority which made the same conclusion."<sup>640</sup>

In 2017, SAC ruled in one case that "not every unfavourable treatment represents discrimination, but only that which is inflicted because of the objective presence of protected grounds",<sup>641</sup> thereby ruling out discrimination by perception.

SAC has now settled its case law that third parties (not victims) filing *actio popularis* motions with PADC have no standing to appeal against its decisions before the administrative courts.<sup>642</sup> That means that public interest NGOs and minority activists bringing PADC proceedings in cases where the rights of many unspecified victims were infringed are excluded from access to judicial review of wanting PADC decisions.

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<sup>632</sup> Supreme Administrative Court, Decision No. 580 of 17 January 2017, case No. 10383/2015.

<sup>633</sup> Supreme Administrative Court, Decision No. 1572 of 7 February 2017, case No. 12173/2015.

<sup>634</sup> Supreme Administrative Court, Decision No. 7096 of 19 May 2012 in case No. 3686/2012; Decision No. 10734 of 1 September 2014 in case No. 1463/2014.

<sup>635</sup> SAC Decision No. 8009 of 22 June 2017 in case No. 1941/ 2016.

<sup>636</sup> SAC Decision No. 1374 of 2 February 2017 in case No. 6496/ 2016.

<sup>637</sup> *Inter alia*, Supreme Administrative Court, Decision No. 8277 of 11 June 2012 in case No. 3852/2012; Decision No. 3645 of 14 March 2014 in case No. 12679/2013 ("conscious" perpetration requirement reiterated twice); Decision No. 1157 of 30 January 2017 in case No. 11077/2015.

<sup>638</sup> Supreme Administrative Court, Decision No. 5645 in case No. 15991/2013, Decision No. 15637 in case No. 1925/2014.

<sup>639</sup> Supreme Administrative Court, Decision No. 1048 of 27 January 2014 in case No. 8033/2013. The case concerned the application of an age bar under a university's regulations.

<sup>640</sup> SAC Decision No. 5831 of 10 May 2017 in case No. 1939/2016.

<sup>641</sup> SAC Decision No. 7174 of 8 June 2017 in case No. 3469/2016.

<sup>642</sup> Among many other authorities, see SAC Ruling (Определение) No. 14203 of 22 November 2017 in case No. 11583/2017.

SAC has often held that discrimination was “inequality provided for by law [...]” thereby excluding discriminatory practices in breach of the law.<sup>643</sup>

The case law has been inconsistent as regards the competence of the administrative courts as opposed to the civil courts in terms of antidiscrimination claims against public bodies. This issue is discussed in detail above in Section 6.1.

### *The equality body practice*

PADC, as a rule, refuses to consider (on admissibility) or uphold (on the merits) discrimination complaints by persons with disabilities who failed to produce medical proof of their disability.<sup>644</sup> It has failed to properly apply the definition of disability, which is concerned with the fact of impairment, regardless of whether it was medically diagnosed or not.

PADC, like SAC, often shows a lack of understanding of indirect discrimination, in some cases fusing it with direct discrimination.

## **11.2 Other issues of concern**

PADC does not use its powers, including its competence to start *ex officio* proceedings, in any strategic way. It has no priorities. It has failed to target serious issues of discrimination, such as Roma segregation in education, Roma destitution and isolation in housing, people with disabilities’ institutionalization, etc.

There is no reliable measurement of the implementation rate of PADC decisions. According to PADC members and staff, PADC binding instructions (orders) have a poor record of execution by respondents.<sup>645</sup> In such cases, the body has no formal powers other than to impose further fines. SAC, contrary to PADC, orders losing parties in proceedings for review of PADC decisions to pay costs and expenses.<sup>646</sup> PADC is express that proceedings are exempt from all fees and costs, but the courts frustrate this provision because it requires them to pay the latter from their own budgets. The case law on this means that complainants against PADC decisions have to pay PADC legal representation costs. PADC actively seeks its costs at the expense of losing complainants, claiming to be bound by law to do so.<sup>647</sup> Where PADC is the losing party, SAC and the lower court order it to pay expenses too.

In 2016, vigilante groups became active around the southeast border, targeting asylum seekers and migrants for verbal and physical violence, robbery, unlawful detention and other crimes. The criminal justice authorities have not dealt with that, with just one unsuccessful criminal court case on record. Vigilante activists have enjoyed positive to neutral coverage by mainstream media, and have actively used the media to incite to organized hate crime against asylum seekers. Former Prime-Minister Borisov publicly praised and thanked them for their ‘help’, stating that all ‘help’ was welcome.<sup>648</sup> The

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<sup>643</sup> Among many other rulings, see SAC Decision No. 2368 of 1 March 2016 in case No. 7838/2015 and Decision No. 1157 of 30 January 2017 in case No. 11077/2015.

<sup>644</sup> *Inter alia*, PADC, Decision No. 259 of 17 December 2008 in case No. 186/2008.

<sup>645</sup> Margarita Ilieva & Desislava Simeonova, Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 006/54/EC (VT/2009/012), Bulgaria, April 2010: Focus Group Discussion with PADC members and staff.

<sup>646</sup> *Inter alia*, Supreme Administrative Court, Decision No. 10734 of 1.09.2014 in case No. 1463/2014; Decision No. 1048 of 27 January 2014 in case No. 8033/2013; Decision No. 1667 of 6 December 2014 in case No. 10013/2013; Decision No. 3645 of 14 March 2014 in case No. 12679/2013.

<sup>647</sup> PADC letter No. 44-00-1609 of 20 April 2015 addressed to an individual named Boyko Boev.

<sup>648</sup> See news reports at: <http://btvnovinite.bg/article/vodeshti-novini/bhk-sas-signal-sreshtu-premiera-bojko-borisov-zaradi-blagodarnostite-kam-dobrovolcheskite-otrjadi.html>; [http://www.dnevnik.bg/bulgaria/2016/04/10/2739769\\_borisov\\_dva\\_koraba\\_za\\_800 mln\\_lv\\_shte\\_budat\\_p\\_ostroeni/](http://www.dnevnik.bg/bulgaria/2016/04/10/2739769_borisov_dva_koraba_za_800 mln_lv_shte_budat_p_ostroeni/);

Prosecutor's Office refused to investigate Borissov for incitement to discrimination and violence, or for incitement to commission of crimes.<sup>649</sup>

Equal rights defendants are at risk, with a number of instances of serious threats and verbal abuse online, as well as in the context of aggressive demonstrations, and at least two instances of physical attacks in 2016.<sup>650</sup> A human rights lawyer, the non-discrimination expert for Bulgaria for the European network of legal experts in gender equality and non-discrimination (and the legal director of a human rights NGO at the time), was questioned by the police within the framework of a prosecutorial examination (a procedure outside of a formal criminal investigation) about public statements she made on winning an anti-Roma hate speech civil case against the current vice-premier, Valery Simeonov. This prosecutorial case is still pending.

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[https://offnews.bg/news/Obshtestvo\\_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d\\_627393.html](https://offnews.bg/news/Obshtestvo_4/Borisov-blagodari-na-hajkite-za-bezhantci-vsiaka-pomosht-bila-dobre-d_627393.html).

<sup>649</sup> See news reports at: <http://www.segabg.com/article.php?id=810515>; <https://ureport.bg/122771/2016/06/27/politika/bulgaria/prokuraturata-otkaza-da-razsledva-borisov-za-saprichastnost-kam-svinskite-opashki>.

<sup>650</sup> See news reports at: <http://btvnovinite.bg/article/kriminalno/neizvestni-napadnaha-predsedatelja-na-bhk-nasred-sofiya.html>; <http://clubz.bg/46257-napadnaha-i-biha-shefa-na-bylgarskiq-helzinski-komitet>; <http://www.bghelsinki.org/bg/novini/press/single/bhk-osyzhda-bezdejstviето-na-instituciите-pri-poredna-proyava-na-tormoz-i-presledvane-na-organizaciyata/>.

## 12 LATEST DEVELOPMENTS IN 2017

### 12.1 Legislative amendments

- Ordinance on Integrative Education

On 20 October 2017, the Government adopted a new Ordinance on Integrative Education (entry into force 27 October 2017) that governs in detail, inter alia, the inclusion of children/ pupils with special needs, including children/ pupils with disabilities, in mainstream kindergartens and schools, as well as their education in special facilities and special schools. The ordinance provides for detailed rules on accessibility, reasonable accommodation, resource support, and procedures for special school referral, among other issues.

### 12.2 Case law

#### *Disability*

**Name of the court:** Supreme Administrative Court

**Date of decision:** 13 January 2017

**Name of the parties:** "Hypophyse" Association v. Minister of Healthcare

**Reference number:** Decision No 438 in case No 9239/ 2015

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/91b2da3ce8a1ad05c22580a60047112b?OpenDocument> (in BG)

**Brief summary:** The Supreme Administrative Court (SAC) ruled that patients with hypophyse adenoma were discriminated against by not being provided conditions for radiosurgery in Bulgaria. The violation resulted from both the effect of existing legal rules and from the lack of legal rules. The Minister of Healthcare was liable. SAC expressly invoked the absolute applicability of the discrimination ban under PADA (applicable to the exercise of all constitutional and statutory rights). The court held that the right to healthcare was at stake, and it was within the field of application of PADA. SAC found a lack of a possibility in practice for a category of persons with disabilities to exercise their right to health services by accessing the highest attainable standard of healthcare. The court invoked CRPD. It revoked a decision by the lower court that in turn had revoked a decision by PADC, the equality body, that initially found in favour of the patients' NGO that brought the case. PADC issued a recommendation to the competent authority to amend Ordinance No. 40 of 24 November 2014 on Fixing the Basic Package of healthcare activities funded by the budget of the National Healthcare Insurance Fund by including radiosurgery, and by providing for remuneration of all medical costs for radiosurgery and other radiation therapy methods, among other measures to secure effective treatment for hypophyse adenoma patients.

**Name of the court:** Supreme Administrative Court

**Date of decision:** 17 January 2017

**Name of the parties:** M.T. and S.P. v. E.D.

**Reference number:** Decision No 580 in case No 10383/ 2015

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/9f4fb780f17ccc48c22580a6002906e7?OpenDocument> (in BG)

**Brief summary:** SAC confirmed a ruling by the lower court that in turn confirmed a decision by PADC to the effect that a school teacher was liable for direct discrimination against a pupil with disabilities who the teacher refused to take on a school excursion together with the rest of the class. The teacher stated she wouldn't have peace of mind considering the girl's health status. SAC held that the direct cause of the child's less favourable treatment was prejudice and fear of the protected ground. The girl had attended previous class trips, and needed no assistance or accommodation to join her classmates on this one.

SAC failed to correct the lower court's reasoning that the pupil's disability-based less favourable treatment "was not objectively justified by a legitimate aim" whereas this would only have been relevant in an indirect discrimination case, and not in the present case of direct discrimination. PADC sanctioned the teacher by a fine of BGN 250 (EUR 125), confirmed by SAC.

**Name of the court:** Supreme Administrative Court

**Date of decision:** 8 February 2017

**Name of the parties:** L.A. and Kh.D. v. Minister of Healthcare

**Reference number:** Decision No 1630 in case No 12978/ 2015

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/b4e1fa29242a12aec22580b90033cddd?OpenDocument> (in BG)

**Brief summary:** SAC confirmed a decision by PADC (by revoking a decision of the lower court's) to the effect that the Minister of Healthcare was liable for failing to take special/ positive measures within the meaning of Articles 10-11 PADA, and thereby committing discrimination on grounds of disability and a violation of the right to private life within the meaning of the Constitution, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The Minister's omission consisted of failing to adopt secondary legislation rules to make it possible for medication that was not registered in any country and was being clinically tested to be prescribed to terminally ill patients. PADC issued a recommendation for the Minister to adopt such secondary norms. The lower court revoked that decision on grounds, *inert alia*, that PADC failed to establish a comparator. SAC revoked the lower court's decision reasoning that no comparator needed to be established as the case did not concern direct discrimination under PADA but a failure to adopt special/ positive measures to equalize opportunities for a group of persons with disabilities, and a violation of their right to privacy under international law. That group of persons with disabilities did not need to be compared to other persons with disabilities in order to find that their right to equal treatment was infringed. It was not necessary to find that special/ positive measures were adopted for the benefit of another group of persons with disabilities but only that such measures were needed by the group of terminally ill patients. The latter group of patients' right to private life included their right to a choice of treatment and to human dignity. The Minister was competent to adopt the lacking rules.

**Name of the court:** Supreme Administrative Court

**Date of decision:** 19 June 2017

**Name of the parties:** A.Y., I.Y. and "Centre for Healthcare Rights Defence" v. Minister of Healthcare and Minister of Labour and Social Policy

**Reference number:** Decision No 7689 in case No 197/ 2017

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/db357546a917a8aac2258141003a538f?OpenDocument> (in BG)

**Brief summary:** SAC upheld a ruling by the lower court that in turn upheld a PADC decision to the effect that the ministers of labour and of healthcare directly discriminated against persons with bilateral sensorineural hearing loss compared to persons with partial hearing loss over a three-year period (2008-2011). PADC issued an injunction for the ministers to take the necessary action so that cochlear implants be included in the lists of publicly-funded devices and supplies for persons with disabilities under the Integration of Persons with Disabilities Act. While under the legislation, the state provided persons with partial hearing loss with funding to replace hearing aids and for all supplies, for persons with bilateral sensorineural hearing loss, it only funded a cochlear implant and its implanting, but not its subsequent replacements, or its maintenance.

## *Religion*

**Name of the court:** Supreme Administrative Court

**Date of decision:** 22 December 2017

**Name of the parties:** M. Kh. v. "Execution of Punishments" General Directorate

**Reference number:** Decision No 15961 in case No 5034/ 2016

**Address of the webpage:**

[http://www.sac.government.bg/court22.nsf/\(\\$All\)/?SearchView&SearchWV=0&SearchFuzzy=0&Query=\(FIELD%20form=Decision3%20OR%20FIELD%20form=Decision\)%20AND%20FIELD%20d\\_No=15961%20AND%20\(FIELD%20d\\_Date%3E=01/01/2017%20AND%20FIELD%20d\\_Date%3C01/01/2018\)&TIMESCOPE=1](http://www.sac.government.bg/court22.nsf/($All)/?SearchView&SearchWV=0&SearchFuzzy=0&Query=(FIELD%20form=Decision3%20OR%20FIELD%20form=Decision)%20AND%20FIELD%20d_No=15961%20AND%20(FIELD%20d_Date%3E=01/01/2017%20AND%20FIELD%20d_Date%3C01/01/2018)&TIMESCOPE=1) (in BG)

**Brief summary:** SAC upheld a Muslim prisoner's claim for non-pecuniary damages against the criminal punishments' execution authority on grounds of the prison administration's failure to provide him with pork-free food. SAC held that omission was in breach of his right to freedom of religion under domestic and international law. SAC considered relevant that the prisoner notified the prison administration in writing of his religious requirement for pork-free food, and filed thereafter numerous motions asking for that requirement to be satisfied, while the administration did nothing for more than four years. The court found the prisoner suffered both humiliation and emotional injury, and physiological suffering due to hunger. SAC awarded him a compensation of BGN 3430 (EUR 1715).

This case was not brought under PADA, and the court did not legally qualify the violation as discrimination. Accordingly, the concept of reasonable accommodation on grounds of religion was not dealt with.

## *Age*

**Name of the court:** Supreme Administrative Court

**Date of decision:** 30 May 2017

**Name of the parties:** I. I. v. Minister of Defence

**Reference number:** Decision No 6688 in case No 10239/ 2016

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/c78a2e65a971c56cc225812f004e8c21?OpenDocument> (in BG)

**Brief summary:** SAC ruled that the Minister of Defence did not discriminate against an employee by terminating his contract based on the employee's becoming entitled to a seniority and age pension and exercising that right. SAC invoked the Public Servant Act provision expressly authorizing dismissal on those grounds. SAC discussed the case within the framework of indirect discrimination. As a comparator, the court used other ministerial employees who, unlike the complainant, were not dismissed while having similarly acquired seniority and age pension rights. The court found that all of those employees were in the same age group. The complainant's dismissal was not on grounds of his age, and the category of persons subject to dismissal on grounds of having acquired seniority and age pension rights was not legally defined by age but by the criterion of having acquired seniority and age pension rights. The court invoked SAC's established case law in that sense.

**Name of the court:** Supreme Administrative Court

**Date of decision:** 22 June 2017

**Name of the parties:** S. T. v. SOT Inc.

**Reference number:** Decision No 8009 in case No 1941/ 2016

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/32bc62eb54f939dbc225813d0039bff5?OpenDocument> (in BG)

**Brief summary:** In a similar age-related dismissal case against a private employer, SAC ruled similarly. The complainant similarly compared himself to other employees who, like him, became entitled to a seniority and age pension, but who, unlike himself, were not



dismissed. SAC held that, regardless of how many other employees were not dismissed, the complainant's dismissal could not be a case of direct discrimination as the employer was entitled, under the Labour Code, to unilaterally dismiss him on grounds of his seniority and age rights without comparing him to other employees. The complainant's 'pensioner' status could not be a protected ground. Moreover, SAC noted, the employer dismissed other pensioners too.

*Ethnicity/ race*

**Name of the court:** Supreme Administrative Court

**Date of decision:** 21 February 2017

**Name of the parties:** N. A. v. Mediapool Ltd.

**Reference number:** Decision No 2171 in case No 12401/ 2015

**Address of the webpage:**

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/3c2f719aaf768b18c22580cd004e345a?OpenDocument> (in BG)

**Brief summary:** SAC ruled that an online news company was liable under Article 8 PADA for consciously abetting harassment in the form of anti-Turkish hate speech comments published by users on its website under a news item. SAC considered important that the respondent company failed to remove the impugned comments for the duration of a month. SAC revoked the lower court's ruling revoking the PADC decision. PADC imposed a fine of BGN 500 (EUR 250) on the company and issued an injunction for it to better control users' hate comments on its site.

*Roma*

**Name of the court:** Burgas District Court

**Date of decision:** 31 July 2017

**Name of the parties:** K.B. and O.I. v. Valery Simeonov (Deputy-Prime Minister)

**Reference number:** Decision No 1151 in case No 7094/ 2016

**Address of the webpage:** [http://212.122.172.41:8888/LegalActs/2017/G/07.16-31/07634516\\_09470417.htm](http://212.122.172.41:8888/LegalActs/2017/G/07.16-31/07634516_09470417.htm) (in BG)

**Brief summary:** The Burgas trial court ruled in a civil hate speech case brought by two Roma journalists against the current Deputy Prime-Minister for Economic and Demographic Policy, finding that 2014 anti-Roma statements made by respondent in Parliament, in his capacity as MP, constituted harassment within the meaning of PADA. Simeonov described Roma as beast-like thieves and violators, destroyers of statehood and laws, insolent, brutal human-like (sub-human) creatures, ready to murder for a few leva, women with the instincts of stray bitches; believing that all owe them everything for free, living outside of all laws, rules and human codes of conduct, using theft and robbery as a means of sustenance, giving birth as a business, taking care of their children by teaching them begging, prostitution and drug dealing, etc.

The court held that respondent's words "could injure anyone of Roma ethnicity, without it being necessary that the statement refer to the entire Roma community in order for it to be perceived as infringing the dignity of an individual self-identifying as its representative". The court ordered Simeonov to abstain from further such speech. However, the court refused to hold that the impugned statements constituted incitement to discrimination as well. It held that only a part of the impugned statements were in breach of the law, while the rest were not. No compensation was awarded as none was sought by claimants (represented by the non-discrimination expert for Bulgaria for the European network of legal experts in gender equality and non-discrimination).

A prevailing trend in Roma litigation is action against hate speech – complaints by Romani individuals and public interest motions by NGOs and others to the equality body alleging harassment and incitement to discrimination, as well as to the Prosecutor's Office in more serious cases amounting to incitement to hatred or discrimination under the Criminal Code.



The Prosecutor's Office refuses to deal with such cases reasoning either that it was a matter of free expression, or effectively agreeing with the racist slander describing it as a matter of public concern, or referring to more technical impediments to enforcement, such as that no one is criminally liable for party programs because those were adopted by collective bodies. The equality body generally takes an effective stance against hate speech.

Two other trends are complaints to the Prosecutor's Office in cases of hate-based anti-Roma violence, and challenges against the inaccessibility of electric meters in Roma residential areas, as well as legal action against forced eviction, including applications for interim relief to the European Court of Human Rights. Figures are not publicly available.

On 10 August 2017, the Sofia City Administrative Court (SCAC) ruled in case No. 6150/2012, also known as *Nikolova v. CHEZ*.<sup>651</sup> After CJEU handed down its preliminary ruling in the case in 2015, SCAC proceedings included hearing expert and other witnesses before SCAC made its 2017 decision. Expert witnesses were heard on a range of alternative technical means to safeguard against electricity theft, and the cost of employing those means instead of keeping electric meters at an inaccessible height. Expert witnesses stated that alternative technical means were employed in all other areas in Bulgaria except the locality in question. A CHEZ company employee was heard concerning alleged misdemeanour on the part of Roma residents.

SCAC ruled that PADC, the equality body, significantly breached procedural rules when hearing the case in 2011 after it was remanded by the Supreme Administrative Court. PADC failed to inform the parties of its decision to alter the legal qualification of the alleged violation: PADC altered the protected ground from *national origin* to *personal status*, and the form of discrimination from *indirect* to *direct*. Failing to inform the parties, PADC infringed their right to defence as it did not hear them on the subject of the new qualification, nor did it allow them to adduce evidence. PADC further failed to collect evidence *proprio motu*. Accordingly, SCAC remanded the case, articulating specific procedural indications for PADC to follow when hearing it anew. SCAC's instructions included ones regarding aspects of the CJEU preliminary ruling that PADC was to take into account in particular, as well as critique concerning the *personal status* protected ground and its application to the case.

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<sup>651</sup> Decision No. 5196 by the Sofia City Administrative Court in case No. 6150/ 2012.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Bulgaria  
**Date:** 1 January 2018

<b>Title of legislation (including amending legislation)</b>	Title of the law: Protection Against Discrimination Act Abbreviation: PADA Date of adoption: 16 September 2003 Latest amendments: 2 August 2013 Entry into force: 30 December 2016 Web link: <a href="http://lex.bg/bg/laws/ldoc/2135472223">http://lex.bg/bg/laws/ldoc/2135472223</a> Grounds covered: sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to.
	Civil/administrative/criminal law: Civil
	Material scope: Universal
	Principal content: harassment, sexual harassment, victimisation, incitement, inaccessible environment, racial segregation); universal personal scope; reasonable accommodation duties; positive duties; shifting burden of proof; specialised body to adjudicate and promote equality; judicial remedy; class actions and <i>actio popularis</i> claims; NGO interveners; exemption from costs.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Integration of Persons with Disabilities Act Abbreviation: IPDA Date of adoption: 2 September 2004 Latest amendments: 14 November 2017 Entry into force: 1 January 2005 Web link: <a href="http://lex.bg/bg/laws/ldoc/2135491478">http://lex.bg/bg/laws/ldoc/2135491478</a> Grounds covered: disability
	Civil/administrative/criminal law: Civil
	Material scope: Universal
	Principal content: Bans direct and indirect discrimination; reasonable accommodation duties employment, education, infrastructure etc.; positive measures.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Ordinance No 4 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements of an Accessible Environment for the Population, including People with Disabilities Abbreviation: n/a Date of adoption: 1 July 2009 Latest amendments: 15 July 2011 Entry into force: 14 July 2009 Web link: <a href="http://lex.bg/bg/laws/ldoc/2135639181">http://lex.bg/bg/laws/ldoc/2135639181</a> Grounds covered: disability
	Civil/administrative/criminal law: Administrative
	Material scope: Architecture and infrastructure
	Principal content: Bans direct and indirect discrimination; reasonable accommodation duties employment, education, infrastructure etc.; positive measures.

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Bulgaria  
**Date:** 1 January 2018

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogation s/ reservation s relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals ?</b>
European Convention on Human Rights (ECHR)	Yes 7 May 1992	Yes 7 September 1992	N/A	Yes	Yes
Protocol 12, ECHR	No	No	N/A	No	N/A
Revised European Social Charter	Yes 21 September 1998	Yes 7 June 2000	N/A	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	Yes 8 October 1968	Yes 21 September 1970	N/A	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes 9 October 1997	Yes 7 May 1999	N/A	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	Yes 8 October 1968	Yes 21 September 1970	N/A	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	Yes 1 June 1966	Yes 8 August 1966	N/A	Yes	Yes
Convention on the Elimination of Discrimination Against Women	Yes 17 July 1980	Yes 8 February 1982	N/A	Yes	Yes

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
ILO Convention No. 111 on Discrimination	Yes unavailable	Yes 22 July 1960	N/A	N/A	Yes
Convention on the Rights of the Child	Yes 31 May 1990	Yes 3 June 1991	N/A	N/A	Yes
Convention on the Rights of Persons with Disabilities	Yes 27 September 2007	Yes 26 January 2012	N/A	No	Yes

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