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including summary



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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Bulgaria

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Reporting period 1 January 2018 – 31 December 2018

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EXECUTIVE SUMMARY

1. Introduction

The current Government rules in coalition with two parties which the European Commission Against Racism and Intolerance has termed 'ultranationalist/fascist': the National Front for the Salvation of Bulgaria and VMRO-BND.^{1 2} Bulgaria is a multi-ethnic and religiously diverse society. According to the 2011 census (the most recent one), the Turkish community amounts to 8.8 % of the population and the Roma community 4.9 %.³ Muslims represent 10 % of the population; Protestants 1.1 % and Catholics 0.8 %.⁴ The majority self-define as Eastern Orthodox. Vulnerable groups include the Roma, refugees/ migrants, people with disabilities, especially intellectual disabilities, non-traditional faiths, LGBT people, Muslims, Turks, Jews and Macedonians. Discrimination and hatred, including hate speech and hate crime, against the Roma are 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, competent under the law for hate crime and hate speech, takes no action. The equality body does not commence *ex officio* proceedings in such cases.

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 such a case.⁵ This ruling has not been implemented and Bulgaria is under enhanced supervision by the Committee of Ministers of the Council of Europe for that. 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.

Jews, Muslims, non-traditional faiths and Turks suffer from manifestations of hate, such as desecration of places of worship and violent demonstrations. The ECtHR found Bulgaria liable in one such case.⁶ Macedonians are denied recognition of their identity (they are considered to be Bulgarian) 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.⁷ Bulgaria is under enhanced supervision by the Committee of Ministers of the Council of Europe for failing to implement these judgments.

People with disabilities suffer from exclusion and disadvantage in education, employment, access to services and participation. 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.⁸ LGBT people suffer from hate speech and hate crime, as well as discrimination.

Equality case law is vibrant, albeit ridden with misconceptions and contradictions. Disability rights enjoy especially favourable reception by adjudicators. In 2018, driven by communal

¹ Internal Macedonian Revolutionary Organisation - Bulgarian National Movement (*Вътрешна Македонска Революционна Организация - Българско Национално Движение*).

² ECRI, *Report on Bulgaria*, published 16 September 2014.

³ National Statistical Institute, *Преброяване 2011* (Census 2011) p. 4. Available at: www.nsi.bg/census2011/NPDOCS/Census2011final.pdf.

⁴ National Statistical Institute, *Преброяване 2011* (Census 2011) p. 5. Available at: www.nsi.bg/census2011/NPDOCS/Census2011final.pdf.

⁵ *Yordanova and Others v. Bulgaria*, judgment of 24 April 2012. Application no. 25446/06.

⁶ *Karahmed v. Bulgaria*, judgment of 24 February 2015. Application no. 30587/13.

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

⁸ *Inter alia*, Supreme Administrative Court, Decision No. 356 of 10 January 2018 in case No. 8993/2016, Decision No. 4931 of 17 April 2018 in case No. 10370/2016.

mobilisation, three important disability rights laws were created, most notably, the People with Disabilities Act (PDA) (in force as of 1 January 2019, after the cut-off date for this report). A strong body of case law on hate speech has developed. However, Roma and LGBT rights protection in other cases is virtually non-existent.

2. Main legislation

The Protection Against Discrimination Act (PADA) 2004 is the main anti-discrimination law, enacted to transpose the directives.⁹ 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. The PADA as a whole complies with the directives, going beyond them in significant aspects: universal material scope, an extended, open-ended list of grounds, additional forms of discrimination, extended equality body powers and special judicial redress. The 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 People with Disabilities Act (IPDA),¹⁰ listing positive and reasonable accommodation duties in a number of fields. Other laws, governing specific fields, such as education, employment and public procurement, provide for positive measures on grounds of disability, age and caring responsibilities. The IPDA was repealed in 2018 and replaced by the PDA¹¹ (in force as of 1 January 2019, after the cut-off date for this report). The PDA was adopted to secure the Convention on the Rights of Persons with Disabilities (CRPD) rights.

Older abstract bans on discrimination exist in 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) (but not Protocol 12 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 and 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

The PADA prohibits and defines direct and indirect discrimination, including discrimination by association and by presumption. The 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. The PADA defines 'on grounds of' as the actual, present or past, or assumed possession of one or more protected characteristics by the person who has been discriminated against, or by another person who is, in fact or presumed to be, associated with the person who has been discriminated against, where the association is a cause for discrimination. The PADA does not permit any general justification for direct discrimination.

The PADA provides for illustrative bans on specific discriminatory conduct in employment, education and service provision. It provides for an exhaustive list of specific exceptions for all protected grounds, including for genuine and determining occupational requirements,

⁹ Bulgaria, Protection against Discrimination Act (*Закон за защита от дискриминация*), adopted September 2003, entered into force January 2004.

¹⁰ Bulgaria, Integration of People with Disabilities Act (*Закон за интеграция на хората с увреждания*), adopted September 2004, entered into force January 2005.

¹¹ Bulgaria, People with Disabilities Act (*Закон за хората с увреждания*), adopted 18 December 2018, entered into force 1 January 2019.

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 at disadvantaged groups are allowed.

The PADA 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'.

The 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, is presumed to have taken or will presumably take any action against discrimination; b) less favourable treatment of a person where a person associated with them has taken, is presumed to have taken or will presumably take 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. The PADA places a positive duty on public bodies to take as a priority positive measures for victims of multiple discrimination. Under the PADA, the equality body hears cases of multiple discrimination with panels of five rather than three members. The case law has failed to deal with the issues surrounding multiple discrimination.

The PADA defines racial segregation, providing that it is a form of discrimination. It provides for reasonable accommodation for people with disabilities in employment and education. The limit of this duty is when, 'the costs are unreasonably high and would seriously hinder' the employer or educator. According to the 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 the 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 the 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 in places of work or study. A shift of the burden of proof is envisaged: 'In proceedings for protection against discrimination, after the party claiming to have been discriminated against, *produces (presents)* facts from which an *inference* of discrimination can be made, the respondent party must prove that the principle of equal treatment was not breached.'

The case law is contradictory with regard to intent, with several decisions in 2018 effectively requiring intent. The Supreme Administrative Court (SAC) held that, for

discrimination to present, less favourable treatment had to be 'knowingly perpetrated'.¹² Sofia City Administrative Court (SCAC) used the same language, adding, in order to clarify 'knowingly', that the treatment had to be 'aimed at'.¹³ However, the Protection Against Discrimination Commission (PADC), the equality body ruled correctly on the same issue, in an anti-Roma harassment (hate speech) case, reasoning that it was irrelevant whether the respondents intended to impinge upon the dignity of their targets.¹⁴ However, in the same case, the PADC invoked arbitrary definitions of discrimination that have no legal basis, such as 'inequality set under law' and 'determining fewer rights for representatives of a state, organisation, individual, etc. as compared to other participants in a common undertaking'.¹⁵

In 2018, the courts continued to conflate the concepts of direct and indirect discrimination. The SAC confirmed a ruling that the less favourable treatment of a certain category of patients excluded from access to public funding for the treatment of their disease constituted indirect discrimination, while terming it 'different treatment'.¹⁶ Similarly, in 2018, the PADC held that, in order for an action to be found to be discriminatory, that action, 'must result in an infringement of the principle of equality and be caused by a protected ground [...]. In both direct and indirect discrimination cases [...] the legislator has determined that there must be "unfavourable treatment"'.¹⁷ This appears to contradict the definition of indirect discrimination contained in the directives.

Adjudicators have applied in some cases justifications that are only relevant to indirect discrimination to cases of direct discrimination or harassment. For instance, in a harassment (hate speech/ incitement) case where TV broadcasters targeted a religious minority, the SAC invoked the justification test relevant to indirect discrimination to discuss whether the less favourable treatment of the religious group established by the court (negative stereotyping, with violence against them being encouraged) was necessary to achieve a legitimate aim.¹⁸ The SAC found the treatment was unjustified but, in its reasons, the court perpetuated the confusion around justification to the extent of discussing a 'proportionate and justified aim'. The SAC qualified the treatment in this case as both indirect discrimination and harassment.

In 2018, case law has revealed issues with judges' understanding of *protected ground* and *causation*. The SAC held that age discrimination would require less favourable treatment of people on grounds of age *alone*, thereby excluding 'mixed reasons' cases.¹⁹ Similarly, SCAC held that the reason for the impugned treatment had at any rate to constitute a protected ground.²⁰ In one case, the SAC held that the less favourable treatment found was on grounds of the complainant's disability without offering reasons as to the *causal link*, while accepting that other people with disabilities were treated better than the complainant, along with people with no disabilities.²¹ In terms of *recourse* against a discrimination finding based on the *wrong protected ground*, the SAC problematically held that a complainant had no standing to appeal against such a decision.²² The complainant had no legal interest to appeal against such a decision as it was not unfavourable to them, discrimination having been found regardless of the ground.

In terms of recognising discrimination *by perception*, the SAC held that discrimination on the ground of sexual orientation was not proven in a case concerning a lease termination

¹² SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/ 2016.

¹³ SCAC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017.

¹⁴ PADC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

¹⁵ PADC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

¹⁶ SAC, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016.

¹⁷ PADC, Decision No. 183 of 3 May 2018 in case No. 287/ 2016.

¹⁸ SAC, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

¹⁹ SAC, Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017, Decision No. 4727 of 12 April 2018 in case No. 2769/ 2018.

²⁰ SCAC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

²¹ SAC, Decision No. 10724 of 3 September 2018 in case No. 2220/ 2017.

²² SAC, Decision No. 7863 of 12 June 2018 in case No. 697/ 2017.

allegedly based on sexual orientation as, inter alia, 'the objective fact of such a protected ground was not established'.²³ The court did not discuss whether a perception that the tenant was gay was proven or not. It did not discuss perception in any way. By holding that discrimination was not proven because 'the objective fact' of sexual orientation was not proven, the SAC implicitly held that a complainant would have to prove that s/he was 'objectively' gay in order to prove discrimination on that ground, thereby excluding discrimination by perception.

In terms of properly identifying a *comparator*, the SAC delivered several problematic decisions in 2018. In a case where the complainant was not considered for an academic job based on university maximum age rules for access to that job, the SAC held that there was no discrimination as the complainant was not treated less favourably compared to other candidates of the same age (instead of comparing the complainant to a younger person who was allowed, or would have been allowed, access to the job).²⁴ Similarly, in a case where the complainant, according to the legislation, was entitled to a lower pension compared to people born before a specific date, the Supreme Court of Cassation confirmed that the complainant was not discriminated against on grounds of age, as it was not established that he was treated less favourably compared to people of his age who were born before the relevant date in 1959.²⁵

In terms of allowing for a *hypothetical comparator*, the SAC failed by ruling in a lease termination case that there was no discrimination, as there was no proof that another person was treated better than the complainant, not taking into account that, there being no other party to the lease agreement, there was no actual person to whom the complainant could be compared and that, therefore, a hypothetical comparator applied.²⁶

4. Material scope

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

In 2018, the SAC continued to evolve disability rights, ruling in many cases well beyond the scope of Directive 2000/78/EC to provide for equality in terms of access to public resources for healthcare, autonomy and participation.²⁷

5. Enforcing the law

The PADA provides for two alternatives: judicial proceedings before the general courts and specialised quasi-judicial proceedings before the equality body, the PADC. A victim can choose. The courts can make a declaration of discrimination and award compensation, as well as order the respondent to take remedial action or to abstain from or to terminate a particular action or inaction. The 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 shifting the burden of proof applies to both procedures. 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 the respondent's failure to rebut an inference of discrimination. However, they have

²³ SAC, Decision No. 6151 of 11 May 2018 in case No. 7203/ 2016.

²⁴ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/ 2016.

²⁵ Supreme Court of Cassation, Ruling No. 306 of 29 March 2018 in case No. 60/ 2018.

²⁶ SAC, Decision No. 6151 of 11 May 2018 in case No. 7203/ 2016.

²⁷ For instance, SAC, Decision No. 363 of 10 January 2018 in case No. 9234/ 2016, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016, Decision No. 5516 of 26 April 2018 in case No. 187/ 2017.

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 occasionally in misinterpretations of direct discrimination as justifiable indirect discrimination.

Under the PADA, the PADC assists victims of discrimination. In practice, complainants are provided with procedural advice on filing their complaints. The PADC has standing to initiate 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 people are infringed without authorisation from a victim. They have standing to initiate proceedings before the 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. In 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, have been considered as regular proof by both the equality body and judges. The PADC has *ex officio* looked at statistical data.

Sanctions for discrimination imposed by the PADC include fines (maximum EUR 1 250) and binding instructions for respondents to take particular preventive or remedial action. The 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 the 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).

According to labour law, people with disabilities are entitled to employment quotas and employer subsidies. Younger and older workers, as well as people with caring responsibilities, also enjoy preferential treatment in employment. Roma people are nominally the beneficiaries of a number of positive programmes in education, housing and other fields, but the impact of these measures in practice has been limited. Under the PDA, more employment quotas for people with disabilities are provided for. In terms of positive action for Roma, in 2018, a court struck down as discriminatory targeted scholarships for Roma students.²⁸

According to settled SAC case law, including in 2018, public interest (*actio popularis*) litigants expressly have no standing to appeal against PADC decisions, as such litigants are said to lack 'a legal interest', not being personally affected by a PADC decision.²⁹ This 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

²⁸ Sofia City Administrative Court, Decision N. 7471 of 10 December 2018 in case No. 9628/2018. For further information please see section 5 – Positive action.

²⁹ For instance, Decision No. 7863 of 12 June 2018 in case No. 697/2017, Ruling No. 6491 of 17 May 2018 in case No. 5486/2018. See also, among many other authorities from previous years, SAC Ruling No. 14203 of 22 November 2017 in case No. 11583/2017.

judicial review of unfavourable PADC decisions. This is a serious hindrance for public interest litigation.

The courts, contrary to the PADA, order losing parties in PADA proceedings to pay costs and expenses.³⁰ The PADA expressly states 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. This case law means that complainants against PADC decisions have to pay PADC legal representation costs. The PADC actively seeks costs at the expense of losing complainants, claiming to be bound by law to do so.³¹

The case law has been inconsistent and unreliable as regards the competence of the administrative courts as opposed to the civil courts in terms of anti-discrimination claims against public bodies. In 2018, contradictory interpretations continued, with some administrative courts considering that they were only competent in compensation cases following PADC proceedings where discrimination had been found, whereas the SAC has held that administrative courts were competent in all cases against public bodies, with or without prior PADC proceedings.³²

In 2018, disability rights activists compelled the government to engage in dialogue and consultation with them for purposes of making three new laws governing disability rights. The activists achieved this by means of political pressure via months of public protests.

6. Equality bodies

The Protection Against Discrimination Commission (PADC) is the national specialised equality body. It was set up under the PADA as an independent collegiate semi-judicial authority with adjudicating powers. The 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, including for legislative change; assist victims of discrimination; and carry out independent research and publish independent reports. The PADC has a vast and growing body of case law, some of it effective. Its decisions are reviewed by two instances of courts, including the SAC.

7. Key issues

- The PADA defines indirect discrimination in an unclear, confusing way, thwarting implementation.
- The definition of incitement to discrimination in the PADA, including instructions to discriminate, expressly requires direct intent.
- The definition of racial segregation in the PADA expressly requires the state of separation to be 'forced'.³³ The European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.³⁴
- The PADC does not use its powers, including its competence to start *ex officio* proceedings, in any strategic way. It has no priorities and has failed to target structural issues.

³⁰ *Inter alia*, Supreme Administrative Court, Decision No. 10734 of 1 September 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; and Decision No. 3645 of 14 March 2014 in case No. 12679/2013.

³¹ PADC letter No. 44-00-1609 of 20 April 2015.

³² SAC, Ruling No. 10400 of 3 August 2018 in case No. 12325/2017.

³³ PADA, Additional Provision, § 1.6.

³⁴ For instance, *D.H. v. Czech Republic*, judgment of 13 November 2007; *Sampanis v. Greece*, judgment of 5 June 2008; *Orsus v. Croatia*, judgment of 16 March 2010 (GC).

- There is no reliable measurement of the implementation rate of PADC decisions. In cases of non-compliance, the PADC has no formal powers other than to impose further fines.
- SAC case law, while evolving, has featured a number of interpretations which are arguably not compliant with the directives, curtailing access to justice in various ways (requiring intent, limiting *actio popularis* standing and providing erroneous legal qualifications).

INTRODUCTION

The national legal system

Bulgaria is a unitary state where the Constitution³⁵ and ratified international instruments are directly enforceable by the courts and take precedence over conflicting national provisions. All courts are bound to apply constitutional and international norms instead of contradicting primary legislation. The legal system is continental, with no *stare decisis*. The Constitutional Court has exclusive authority to bindingly interpret the Constitution. Only a limited number of public institutions have standing to initiate proceedings with this Court. There is no right to individual petition. Secondary legislation may not contradict primary legislation. If it does, it is subject to being repealed by the administrative courts. All courts have a duty to apply primary legislation instead of contradicting secondary legislation.

The Protection Against Discrimination Act 2004 (PADA)³⁶ 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. The PADA establishes an 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. The PADA also provides for parallel judicial recourse to the civil courts.

In parallel, pre-existing schematic discrimination bans are in place under laws governing specific fields and in the Constitution. Older legislative bans on discrimination are not harmonised with the PADA, differing in terms of protected grounds, exceptions and definitions. Furthermore, there is inconsistency between the PADA and laws governing particular fields providing for direct or indirect discrimination.³⁷

The other significant law on equality, the Integration of People with Disabilities Act (IPDA),³⁸ bans disability discrimination and provides for positive action and accommodation duties in a number of fields. Furthermore, a number of laws governing specific fields, such as education, employment, public procurement and taxation, provide for positive measures on grounds of disability, age and caring responsibilities.

List of main legislation transposing and implementing the directives

The Protection Against Discrimination Act,³⁹ adopted in 2003. 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, family status,⁴⁰ property status or any other ground provided for by law or by international treaty to which Bulgaria is a party. Scope: universal.

³⁵ Bulgaria, Constitution (*Конституция*), adopted July 1991, latest amendment December 2015.

³⁶ Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*), adopted 2003, in force as of 2004, latest amendment 19 January 2018.

³⁷ Examples include Article 141 of the Defence 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).

³⁸ Bulgaria, Integration of People with Disabilities Act (*Закон за интеграция на хората с увреждания*), adopted 2004, in force as of 2005, latest amendment 20 July 2018. Repealed 18 December 2018 (repealing in force as of 1 January 2019, after the cut-off date for this report).

³⁹ Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*), adopted 2003, in force as of 2004, latest amendment 19 January 2018.

⁴⁰ LGBT families would be protected under 'sexual orientation', as well as possibly 'family status'. No case has yet dealt with this issue. Accordingly, judicial interpretation would be required to determine whether 'family status' would be effectively applicable to LGBT families.

Integration of People with Disabilities Act,⁴¹ adopted 2004. Ground: disability. Scope: universal.

People with Disabilities Act,⁴² adopted 18 December 2018. Ground: disability. Scope: universal.

⁴¹ Bulgaria, Integration of People with Disabilities Act (*Закон за интеграция на хората с увреждания*), adopted 2004, in force as of 2005, latest amendment 20 July 2018. Repealed 18 December 2018 (in force as of 1 January 2019, after the cut-off date for this report).

⁴² Bulgaria, People with Disabilities Act (*Закон за хората с увреждания*), adopted 18 December 2018, in force as of 1 January 2019, after the cut-off date for this report.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Bulgaria includes the following article dealing with non-discrimination.

Article 6 is 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. Age, sexual orientation and disability are not covered. 'Personal status' could potentially be used to cover those grounds, but no case law to that effect exists. Therefore, judicial interpretation would be required to determine whether age, disability and sexual orientation would be covered under 'personal status'.

This provision applies to all areas covered by the directives. Its material scope is broader than that 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 the main legislation transposing the two EU anti-discrimination directives: 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 to which Bulgaria is a party (Constitution, Article 6 (2); PADA, Article 4).⁴³

2.1.1 Definition of the grounds of unlawful discrimination within the directives

National legislation only defines *disability* and *sexual orientation*. In national case law, definitions of certain other grounds do exist as well, as discussed below.

a) Racial or ethnic origin

In national legislation, neither racial nor ethnic origin are defined. In national case law, there was a recent attempt to clarify 'ethnic origin'. In 2018, the Supreme Administrative Court (SAC) held that there was a difference between 'ethnic origin' ('ethnic belonging' or 'ethnic affiliation' in the language of the PADA ('*етническа принадлежност*')) and 'origin' ('*произход*'), also a protected ground in the PADA.⁴⁴ The SAC held that 'ethnic origin' ('ethnic affiliation') was 'linked to the idea of a social community distinct in terms of tribal affiliation, a common language and a cultural and traditional foundation'. Therefore, the SAC held, treatment allegedly based on belonging to the Roma ethnicity was on grounds of 'ethnic affiliation' ('ethnic origin'). This reasoning was clearly based on the CJEU definition in Case C-83/14 *Chez*.

There has been no (recent) case law interpretation of 'racial origin'.

b) Religion and belief

Neither the PADA nor other national legislation defines religion or belief. The Religious Denominations Act (RDA) defines a 'denomination' as 'a set of beliefs and principles, a religious community and its religious institution'.⁴⁵ 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'.⁴⁶ The RDA further defines a 'religious institution' as 'a religious community registered in accordance with [the RDA] that has the capacity of a legal person, governing bodies and a statute'.⁴⁷ There is no defined relationship, in legislation or case law, between these definitions and religion as a protected ground in the PADA. In 2018, the Supreme Administrative Court relied *obiter* on the above definitions in the RDA in a PADA case concerning hate speech in a TV broadcast targeting a minority religious community.⁴⁸ While the court did not clarify the relevance of the RDA definitions for the case at hand, it clearly viewed them as relevant for PADA purposes.

⁴³ Mostly, the grounds overlap but some, like sexual orientation and 'any other ground provided for by law or by international treaty to which Bulgaria is a party', are only protected under the PADA and not under the Constitution.

⁴⁴ SAC, Decision No. 12620 of 18 October 2018 in case No. 115/2018.

⁴⁵ Bulgaria, Religious Denominations Act (RDA) (*Закон за вероизповеданията*), adopted December 2002, latest amendments 29 December 2018, Additional Provisions, § 1 (1).

⁴⁶ RDA, Additional Provisions, § 1 (2).

⁴⁷ RDA, Additional Provisions, § 1 (3).

⁴⁸ Supreme Administrative Court, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

c) Disability

The PADA does not define *disability*; the IPDA does and those definitions are applicable to the PADA across fields and forms of discrimination. Under the IPDA, § 1.1 Additional Provision, *disability* is 'any loss or impairment of the anatomical structure, physiology or psychology of an individual'. Furthermore, under the IPDA, § 1.2 Additional Provision, *long-term disability* is an '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 % or more'.⁴⁹ If the fact of disability is disputed in a case under the PADA, the above definitions will determine the issue. According to the case law, disability will be expected to be proven by a medical certificate. In 2018, the SAC continued to consistently rely on medical certificates when discussing the fact of disability in a discrimination case in order to determine whether an individual actually has a disability.⁵⁰

In its 2018 case law, the SAC continued to consistently rely on IPDA definitions, as well as CRPD definitions, for the purposes of PADA cases.⁵¹ The SAC noted that the IPDA definitions were not identical to what the court termed definitions in Article 1, paragraph 2 of the CRPD ('[...] 'including] long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'), and that, in principle, the CRPD as an international instrument took precedence (in this case, it was not necessary to disapply the IPDA definitions).⁵² In 2018, the SAC interpreted 'disability' as a protected ground by holding that, 'the protected ground of disability is not substantiated by the fact of a particular illness but by the consequences that this illness has for the individual and for a group of persons who have that illness, [the consequences of] which hinder the latter's full participation in public life on a par with the rest of society'.⁵³ Therefore, an illness was not equivalent to a disability.⁵⁴ In the past, the SAC has held that, while a sickness does not equate to disability, certain cancers do meet the definition of disability in international law.⁵⁵

In practice, where a person's disability is factually a long-term disability, and they can have it medically certified, they will do so, as *long-term disability* is linked to enhanced monetary and other (material) entitlements (not better non-discrimination protection) in the IPDA. Under the PADA, equality rights are the same for *disability* and for *long-term disability* across fields and forms of discrimination. In a discrimination case, a person with a disability would be expected to present a medical certificate of their disability and that certificate would determine whether their disability is long-term or not. In practice, a litigant with a disability would not have to deal with the elements of either definition, nor would the court have to establish whether the facts of the case correspond to any of the definitions, as a medical certificate would be used as proof and that certificate would be considered indisputable. A medical certificate would provide proof of a medical condition and its longevity. In terms of societal impact, the court would hear (expert) witnesses and gather other evidence as it saw fit.

The IPDA definition of *disability* is arguably more liberal and inclusive than the one elaborated by the CJEU in the case of *Ring and Skouboe Werge* as it covers *any* limitation,

⁴⁹ This definition is reproduced literally in the Employment Promotion Act (*Закон за насърчаване на заетостта*), Additional Provision, § 1(29).

⁵⁰ For instance, SAC, Decision No. 4151 of 30 March 2018 in case No. 494/2015, Decision No. 4931 of 17 April 2018 in case No. 10370/2016, Decision No. 6558 of 17 May 2018 in case No. 12550/2017.

⁵¹ For instance, SAC, Decision No. 2138 of 16 February in case No. 13552/ 2016; Decision No. 10724 of 3 September in case No. 2220/ 2017.

⁵² SAC, Decision No. 10724 of 3 September in case No. 2220/ 2017.

⁵³ SAC, Decision No. 5302 of 24 April in case No. 11143/ 2016.

⁵⁴ SAC, Decision No. 10724 of 3 September in case No. 2220/ 2017.

⁵⁵ See more information in Section 12.2 below.

regardless of whether it is long-term or not. On the other hand, the IPDA definition makes no mention of interaction with societal barriers producing hindrance. That arguably amounts to a lack of recognition that people with disabilities have no limitation as such but only in relation to biased societal infrastructure, including attitudes. Use of the CRPD by the courts, while relatively consistent, would arguably not suffice to remedy this, as capacity-building would be needed to ensure all judges properly focus on all the relevant conceptual elements. Furthermore, sufficient explicit domestic definitions are required to structure the conduct of everyone (including legal persons) with a duty to abstain from disability discrimination. Importantly, correct domestic definitions help shape public attitudes and the expectations of people with disabilities.

Other legislation, outside the field of non-discrimination, also includes disability-related definitions. In the Automobile Transport Act,⁵⁶ Additional Provisions, § 1 (42), 'a person with disabilities' and 'a person with reduced mobility' are defined within the meaning of Regulation (EU) No. 181/2011. In the Rail Transport Act,⁵⁷ Additional Provisions, § 1 (41), 'a person with disabilities' or 'a person with reduced mobility' is defined as a person within the meaning of Article 3, Paragraph 15 of Regulation (EC) No. 1371/2007. In the Pre-School and School Education Act (PSEA), there are definitions of 'a pupil with chronic illnesses' and of 'special educational needs'.⁵⁸ In the Ordinance on Inclusive Education issued under the PSEA, there is a definition of 'communication impairments'.⁵⁹

Furthermore, a piece of secondary legislation defines 'persons with reduced mobility' as including, among others, people with physical, sensory, mental and combined disabilities, people temporarily hindered in their movements (in plaster or using crutches) and people shorter than 150 cm.⁶⁰ A further piece of secondary legislation defines 'persons with hearing or speaking impairments' for the purposes of providing such people with access to special conditions of use of the 112 European emergency number.⁶¹ Another piece of secondary legislation defines 'persons of reduced mobility' as including people with disabilities within the meaning of the IPDA, among others.⁶² A further piece of secondary legislation defines 'a person with reduced mobility' as 'a person whose mobility is reduced in using transport due to physical inability (sensory or locomotor, 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'.⁶³

⁵⁶ Bulgaria, Automobile Transportation Act (*Закон за автомобилните превози*), adopted September 1999, latest amendments 18 December 2018.

⁵⁷ Bulgaria, Rail Transport Act (*Закон за железопътния транспорт*), adopted November 2000, latest amendments 18 September 2018.

⁵⁸ Bulgaria, Pre-School and School Education Act (*Закон за предучилищното и училищното образование*), entry into force 1 August 2016, latest amendments 29 December 2018, Additional Provisions, § 1.29 and § 1.27.

⁵⁹ Bulgaria, Ordinance on Inclusive Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, latest amendments 18 December 2018, Additional Provisions, § 1.2.

⁶⁰ Bulgaria, 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.

⁶¹ Bulgaria, Ordinance N. 81213-238 of 6 March 2018 (*НАРЕДБА № 81213-238 от 6 март 2018 г. за условията и реда за достъп на хората със слухови или говорни увреждания до единния европейски номер за спешни повиквания 112*), Additional Provision §1.1.

⁶² Bulgaria, 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.

⁶³ Bulgaria, 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, Additional provisions, § 1 (3).

All these definitions would be applicable in a discrimination case within their material scope. For example, in a transport discrimination case, the court or equality body would take into consideration disability definitions in the relevant transport legislation, along with IPDA definitions.

d) Age

National legislation does not define *age*. The Employment Promotion Act (EPA),⁶⁴ Additional Provision, § 1(4a) defines 'groups of unequal status on the labour market', using age as a component, along with other protected grounds.⁶⁵ This definition is relevant for the purposes of the positive measures provided for in the EPA. In terms of the PADA, positive measures in the EPA, including ones on grounds of age, constitute an express exception.⁶⁶ The EPA, Additional Provision, § 1(18) also defines 'adult', which is applicable to positive measures in the EPA.⁶⁷

In 2018, the SAC held that the protected ground of 'age' in the PADA was not the same thing as age as an element of the requirements for pension entitlement under social security legislation (both age and years of service being required).⁶⁸ Accordingly, there was no less favourable treatment on grounds of age in the cases of the complainants who were dismissed after becoming entitled to a pension. The SAC held that age discrimination would require less favourable treatment of people on grounds of age *alone*, thereby sweepingly excluding 'mixed reasons' cases. The court declared that the legislation allowing people entitled to a pension to be dismissed on that basis did not set age-based conditions.

As Bulgaria has a continental legal system, and not one based on legal precedent, these problematic rulings do not determine the law or preclude legal redress in other cases. Therefore, mixed grounds cases are still litigable under the law; potentially successfully before other courts or judges.

Moreover, the rulings in question do not contradict the ban on multiple discrimination, as the latter concerns cases where more than one protected ground played a role, whereas in mixed reasons cases, such as the retirement cases discussed above, a protected ground (age) is coupled with a factor that is not a protected ground (seniority/ years of service). Multiple discrimination cases are undisputedly litigable.

e) Sexual orientation

Sexual orientation is defined in the PADA, Additional Provision, § 1 (10), as 'heterosexual, homosexual or bisexual orientation'. This would potentially include all aspects of 'orientation', including all relevant types of attraction. As no case law dealing with such specifics exists yet, this would be subject to judicial interpretation. The existing definition of sexual orientation does not refer to any sexual categories of people, nor does it imply inclusion in such categories for the purposes of non-discrimination protection. In 2018, the SAC held that a denial of the services of a notary public based on domestic legislation not

⁶⁴ Bulgaria, Employment Promotion Act (*Закон за насърчаване на заетостта*), adopted December 2001, entry into force January 2002, latest amendments 2 November 2018.

⁶⁵ "Groups of unequal status on the labour market" shall be groups of unemployed people of lower competitiveness on the labour market, including: unemployed young people; unemployed young people with permanent disabilities; unemployed young people 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 three years; unemployed persons who have served a prison sentence; unemployed persons older than 50 years; unemployed persons with elementary or lower levels of schooling and no vocational qualifications; other groups of unemployed persons."

⁶⁶ PADA, Article 7 (1.9).

⁶⁷ "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'.

⁶⁸ SAC, Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017, Decision No. 4727 of 12 April 2018 in case No. 2769/ 2018.

recognising same-sex marriage 'was not linked in any way to the complainant's sexual orientation'.⁶⁹

2.1.2 Multiple discrimination

In Bulgaria, multiple discrimination is prohibited in the law. The PADA defines multiple discrimination as 'discrimination based on more than one [protected] ground'.⁷⁰ The PADA places a statutory duty on public authorities to give priority to positive measures for the benefit of multiple discrimination victims.⁷¹ The PADC hears multiple discrimination cases sitting with an extended panel of five members (rather than three).⁷² The law does not provide for higher compensation levels in cases of multiple discrimination. The case law of the courts and of the PADC accepts that multiple grounds cases are litigable, with many such cases being heard and decided. In some cases only, a court has said that the contested treatment needed to be based on a (single) protected ground only (age, for instance), as opposed to a combination of a protected ground and another characteristic (as in retirement cases, where age is taken into account together with seniority/ years of service). Bulgaria has a continental legal system, and not one based on legal precedent, which means that individual court rulings do not determine the law or preclude legal redress.

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

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Bulgaria, discrimination based on a perception or assumption of a person's characteristics, is prohibited in national law. The PADA defines 'on [protected] grounds' as 'on grounds of the actual, past or present, or *presumed* fact of one or more of these characteristics [...]'.⁷³ Therefore, discrimination on perceived or assumed grounds is explicitly prohibited. In the past, case law by both the PADC and the courts has expressly recognised this. However, in 2018, the SAC held that discrimination on grounds of sexual orientation was not proven in a case concerning a contract termination allegedly based on the complainant's sexual orientation as, *inter alia*, 'the objective fact of such a protected ground was not established'.⁷⁴ In other words, the SAC implicitly required the complainant to prove that he was 'objectively' gay, thereby excluding the potential for discrimination by perception. Similarly, in 2017, the 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',⁷⁵ thereby ruling out discrimination by perception.

b) Discrimination by association

In Bulgaria, discrimination based on association with people with particular characteristics is prohibited in national law. The 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 presumed to be, associated*

⁶⁹ SAC, Decision No. 12113 of 10 October 2018 in case No. 5381/ 2017.

⁷⁰ Bulgaria, Protection Against Discrimination Act (PADA) (*Закон за защита от дискриминация*), Additional Provisions, § 1 (11).

⁷¹ 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.

⁷² PADA, Article 48 (3).

⁷³ PADA, Additional Provisions, § 1 (8).

⁷⁴ SAC, Decision No. 6151 of 11 May 2018 in case No. 7203/ 2016.

⁷⁵ SAC, Decision No. 7174 of 8 June 2017 in case No. 3469/2016.

with the person discriminated against, where this association is a cause of the discrimination'.⁷⁶ Therefore, discrimination by association, including presumed association, is explicitly banned. Case law by the PADC expressly recognises this. The law is in line with the judgment in Case C-303/06.

In a 2014 case, the PADC ruled that a parent of a child with a disability was discriminated against on grounds of disability by association, as well as on grounds of being a convicted offender, by being rendered ineligible under legislation as a 'personal assistant' (a paid position) to her child.⁷⁷ The first-instance administrative court and the SAC confirmed that PADC ruling. The SAC expressly rejected an argument by the respondent, the 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. The SAC held that the parent was directly discriminated against on grounds of disability due to her association with her child. The SAC held that the parent of a child with a disability was discriminated against on grounds of disability by association. The PADC and 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.

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 in the PADA, Article 4 (2) as, 'treating a person on the grounds referred to in Subsection 1 less favourably than another person is treated, has been treated or would be treated in comparable similar circumstances'.

Under the PADA, 'unfavourable treatment' is also defined: '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'. This definition, which replaced a previous definition of unfavourable treatment, was adopted following the ruling of the CJEU in case C-83/14 (the *Chez* case).⁷⁸ The intention was to clarify that less favourable treatment is not restricted to rights provided for under law. The effect, however, is dubious, the wording being unclear (unfavourable treatment shall result in less favourable treatment).

The IPDA, Paragraph 1.3, Additional Provisions also defines direct discrimination: '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'.

In 2018, there was case law revealing issues with the judges' understanding of the concepts of *causation and comparator*. In 2018, the SAC held that age discrimination would require less favourable treatment of people on grounds of age *alone*, thereby sweepingly excluding 'mixed reasons' cases.⁷⁹ Similarly, Sofia City Administrative Court held that, for discrimination to be present, the reason for the impugned treatment had at any rate to constitute a protected ground, dismissing potential '*mixed motives*' cases.⁸⁰

In terms of *properly identifying a comparator*, the SAC delivered several problematic decisions in 2018. In a case where the complainant was not considered for an academic

⁷⁶ PADA, Additional Provisions, § 1 (8).

⁷⁷ PADC, Decision No. 126 of 1 April 2014.

⁷⁸ Judgment of the Court (Grand Chamber) of 16 July 2015, "*CHEZ Razpredelenie Bulgaria*" AD v *Komisija za zashtita ot diskriminatsia*, C-83/14, EU:C:2015:480.

⁷⁹ SAC, Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017, Decision No. 4727 of 12 April 2018 in case No. 2769/ 2018.

⁸⁰ SCAC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

job based on university maximum age rules for access to that job, the SAC held that there was no discrimination as the complainant was not treated less favourably compared to other candidates of the same age.⁸¹ In this case, the SAC appeared to confuse 'age' as a basis for the impugned treatment with a characteristic defining the comparator. Instead of comparing the complainant's treatment to a younger person who was allowed, or would have been allowed, access to the job, the court seemed to find the age-based denial non-discriminatory as no other similarly aged (older than the maximum age) candidates were not treated any better than the complainant.

Similarly, in a case where the complainant, under the legislation, was entitled to a lower amount of pension compared with people born before a specific date (in 1959), the Supreme Court of Cassation confirmed that the complainant was not discriminated against on grounds of his age as it was not established that he was treated less favourably compared to people of the same age who were born before the relevant date in 1959.⁸² In other words, the court erroneously compared the complainant to others in his own age group (who would, of course, be treated similarly to him) as opposed to a different age group, missing the point of age discrimination (treating people of different ages differently).

This unfortunate ruling does not amount to an obstacle to age discrimination claims in general. First, it only concerns a specific issue and not all (potential) age-related issues. Secondly, Bulgaria's legal system is not based on judicial precedent and court rulings rendered in individual cases, even supreme court rulings, do not bind other judges, even trial court judges. Higher court rulings in individual cases may be relevant but they are not binding. Therefore, there is no general obstacle to age discrimination claims, which are numerous and, sometimes, successful.

In 2018, in a disability case, the SAC held that the less favourable treatment found was on grounds of the complainant's disability without offering reasons as to the causal link, while accepting that other people with disabilities were treated better than the complainant, along with people with no disabilities.⁸³

In terms of allowing for a *hypothetical comparator*, in 2018, the SAC failed by ruling in a lease termination case that discrimination was not present as there was no proof that another person was treated better than the complainant, not taking into account the fact that there was no other party to the lease agreement to compare to the complainant and that, therefore, a hypothetical comparator only applied.⁸⁴

In terms of intent, in 2018, the SAC held that, for discrimination to be present, less favourable treatment had to be 'knowingly perpetrated', effectively requiring *intent*.⁸⁵ Sofia City Administrative Court (SCAC) used the same language, adding, in order to clarify 'knowingly', that the treatment had to be 'aimed at'.⁸⁶ The PADC, however, ruled correctly on the same issue, in an anti-Roma harassment (hate speech) case, reasoning that it was irrelevant whether the respondents intended to impinge upon the dignity of their targets.⁸⁷ Nevertheless, in the same case, the PADC invoked arbitrary definitions of discrimination that have no legal basis, such as 'inequality set under law' and 'determining fewer rights for representatives of a state, organisation, individual, etc. as compared to other participants in a common undertaking'.⁸⁸

⁸¹ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/ 2016.

⁸² Supreme Court of Cassation, Ruling No. 306 of 29 March 2018 in case No. 60/ 2018.

⁸³ SAC, Decision No. 10724 of 3 September in case No. 2220/ 2017.

⁸⁴ SAC, Decision No. 6151 of 11 May 2018 in case No. 7203/ 2016.

⁸⁵ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/ 2016.

⁸⁶ SCAC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017.

⁸⁷ PADC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

⁸⁸ PADC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

In terms of *recourse* against the PADC or a court making a discrimination finding based on the *wrong protected ground*, in 2018, the SAC problematically held that a complainant had no standing to appeal against a decision finding discrimination on a ground other than the one alleged.⁸⁹ In such a case, the complainant had no legal interest to appeal against the decision as it was not unfavourable to them, discrimination having been found regardless of the ground.

In 2018, the courts continued *to conflate the concepts of direct and indirect* discrimination. The SAC confirmed a ruling by SCAC that the less favourable treatment of a certain category of patients who were excluded from access to public funding for the treatment of their disease as opposed to other categories of patients who were entitled to funded treatment constituted indirect discrimination, while terming it 'different treatment'.⁹⁰ Similarly, in some cases the PADC has misapplied the concept of indirect discrimination to cases of less favourable treatment. In 2018, the PADC held that, in order for an action to be found to be discriminatory, that action 'must result in an infringement of the principle of equality and be caused by a protected ground [...]'. In both direct and indirect discrimination cases [...] the legislator has determined that there must be "unfavourable treatment".⁹¹ This appears to contradict the definition of indirect discrimination in the directives.

b) Justification for direct discrimination

The PADA does not permit a general justification for direct discrimination with respect to any ground.⁹² It only provides for an exhaustive list of specific exceptions for various protected grounds, including the six EU grounds.⁹³

The case law has in some cases *conflated* various forms of discrimination, including *direct and indirect* discrimination, applying in some of those cases *justifications* that are only relevant to indirect discrimination to cases of *direct* discrimination or harassment. For instance, in a harassment (hate speech/ incitement) case where TV broadcasters targeted a religious minority, the SAC invoked the justification test relevant to indirect discrimination to discuss whether the less favourable treatment of the religious group established by the court (their negative stereotyping, with violence against them encouraged) was necessary to achieve a legitimate aim.⁹⁴ Ultimately, the SAC found the treatment was unjustified but in its reasons, the court perpetuated the confusion to the extent of discussing a 'proportionate and justified aim'. The SAC qualified the treatment as both indirect discrimination and harassment.

The SAC has applied the justification test which is only relevant for indirect discrimination to cases of less favourable treatment, i.e. direct discrimination, in previous years too. In 2017, in a case where a pupil with a disability was not allowed to take part in a school trip because of their disability, the SAC agreed with the lower court that the treatment was causally linked to a protected ground and not objectively justified by a legitimate aim.⁹⁵ In another case decided in 2017, the SAC directly invoked the PADA provision on direct discrimination, reasoning that a difference of treatment would be justified by proportionality.⁹⁶

⁸⁹ SAC, Decision No. 7863 of 12 June 2018 in case No. 697/ 2017.

⁹⁰ SAC, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016.

⁹¹ PADC, Decision No. 183 of 3 May 2018 in case No. 287/ 2016.

⁹² In Bulgaria, national law provides for specific (not general) exceptions for direct discrimination on the ground of age. Under the PADA, there are six exceptions for age altogether, three of which refer to other laws providing for age differentiation.

⁹³ PADA, Article 7.

⁹⁴ SAC, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

⁹⁵ SAC, Decision No. 580 of 17 January 2017, case No. 10383/2015.

⁹⁶ SAC, Decision No. 1572 of 7 February 2017, case No. 12173/2015.

2.2.1 Situation testing

a) Legal framework

In Bulgaria, situation testing is implicitly permitted in national law. While the law is silent, general rules on evidence imply that testing results are admissible, as they place no limit on the admissible types of proof.⁹⁷ Under general court procedure, judges and the PADC are free to assess any evidence according to their own 'inner conviction'. Therefore, testing is allowed as a matter of course. The admissibility and merit of testing data in a particular case will be for the court to decide.

In the past, 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 deliberate nature of the testing exercise.⁹⁸ 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, they should be believed. 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 with a declared affiliation to Roma rights groups have suffered more serious non-pecuniary damages because their sensitivity to discrimination was exacerbated as a result of their rights work.⁹⁹

Neither judges nor the 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. The PADC has not only unquestioningly accepted testing as a valid source of facts and evidence but, in the past, has done its own testing to verify complaints.¹⁰⁰ 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.

However, there are no records of recent case law involving testing.

b) Practice

In Bulgaria, situation testing is 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 access to healthcare, in particular maternity healthcare,¹⁰¹ as well as access to employment and to hotel, restaurant, café and other catering services, including public swimming pools. In the past, testing in the presence of 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 the purposes of discrediting respondents' pretexts within the framework of a pending case (rather than prior to initiating litigation).¹⁰² In a case against Sofia University concerning denial of access to a student sauna, the claimants successfully tested the respondent's defence that it was not gay men but non-students who were excluded: testing revealed that non-gay

⁹⁷ Bulgaria, Civil Procedural Code (*Граждански процесуален кодекс*), Article 12.

⁹⁸ *Inter alia*, Supreme Court of Cassation, Decision No. 591 of 12 March 2008.

⁹⁹ *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.

¹⁰⁰ Protection Against Discrimination Commission (PADC) members, including a Roma person, and staff have visited a cafe and a swimming pool unannounced to verify whether older clients and Roma would be served.

¹⁰¹ See information on a 2016 testing campaign led by the author of this report:

<https://balkaninsight.com/2017/12/18/roma-segregated-in-bulgarian-maternity-wards-12-17-2017/>.

¹⁰² 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.

non-students did gain admission.¹⁰³ Testers did not test the entrance of gay or non-gay people, but the entrance of students compared to non-students so as to disqualify the defence. This resulted in a finding of discrimination.

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. The PADA, Article 4 (3), defines indirect discrimination as, 'placing a person or persons who have a [protected] characteristic or a person or persons without 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, which amended the previous one, was adopted in 2016 following the CJEU's ruling in Case C-83/14 *Chez*. 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 practice is objectively justified with a view to a legitimate aim and the means to achieving that aim are appropriate and necessary'. The current definition sought to clarify that indirect discrimination by association was banned. The clarity of its wording, however, is questionable, arguably compromising its usefulness.

The IPDA, Paragraph 1.4, Additional Provisions, also defines indirect discrimination: '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'.

As discussed above in Section 2.2, the case law has in some cases misapplied the concept of indirect discrimination to cases of less favourable treatment. In 2018, the PADC held that, in order for an action to be found to be discriminatory, that action 'must result in an infringement of the principle of equality and be caused by a protected ground [...]. In both direct and indirect discrimination cases [...] the legislator has determined that there must be "unfavourable treatment"'.¹⁰⁴ This appears to contradict the definition of indirect discrimination contained in the directives.

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, the PADC and judges have failed to undertake a proper analysis of necessity, including by looking into alternatives to impugned measures. In some 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 rule on shifting the burden of proof, *de facto* excusing respondents of their burden of proof in terms of establishing a justification for disparate impact.

¹⁰³ Sofia District Court, Decision in civil case No. 6520/2004, 21 April 2005.

¹⁰⁴ PADC, Decision No. 183 of 3 May 2018 in case No. 287/ 2016.

2.3.1 Statistical evidence

a) Legal framework

In Bulgaria, there is legislation regulating the collection of personal data. The relevant rules are not included in the PADA 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.

Data collection is provided for in the Statistics Act,¹⁰⁵ the Protection of Personal Data Act,¹⁰⁶ the Census 2011 Act,¹⁰⁷ the Integration of People with Disabilities Act,¹⁰⁸ the Ministry of Interior Act,¹⁰⁹ the Bulgarian Personal Documents Act,¹¹⁰ the Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection,¹¹¹ and the Ordinance on Integrative Education.¹¹² Data collection is provided for regarding: racial or ethnic origin; national origin; mother tongue; political, religious or philosophical convictions; membership of political parties or organisations with political, religious, philosophical or trade union aims; health status or disability; sexual life;¹¹³ personal life; human genome; unlawful acts committed; nationality; sex; age; education; language.¹¹⁴

This is considered sensitive data. Such data may only be collected if the person concerned consents or in accordance with specific exceptions accompanied with procedural guarantees. The exceptions include where:

- 1) this is necessary to carry out specific duties under labour law;¹¹⁵
- 2) it is necessary to protect human life or health and the person concerned is unable to give their consent;¹¹⁶
- 3) the data are 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 are not published without the consent of the person concerned;¹¹⁷

¹⁰⁵ Bulgaria, Statistics Act (*Закон за статистиката*), adopted June 1999, latest amendment 19 January 2018, Article 21.

¹⁰⁶ Bulgaria, Protection of Personal Data Act (*Закон за защита на личните данни*), adopted January 2002, latest amendment 19 January 2018), Article 1 (3-5).

¹⁰⁷ Bulgaria, 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.

¹⁰⁸ Bulgaria, Integration of People with Disabilities Act (IPDA), Articles 9 and 29.

¹⁰⁹ Bulgaria, Ministry of Interior Act (*Закон за Министерството на вътрешните работи*), adopted June 2014, latest amendment 18 September 2018), Article 10 (2), Articles 25-26.

¹¹⁰ Bulgaria, Bulgarian Personal Documents Act (*Закон за българските лични документи*), adopted August 1998, latest amendment 23 May 2018), Articles 18 and 65.

¹¹¹ 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.

¹¹² Bulgaria, Ordinance on Integrative Education, Article 145 (2) – concerning pupils with special educational needs.

¹¹³ There is no definition of 'sexual life'. The ordinary meaning would apply. It is not meant to work as a synonym for 'sexual orientation'; it is broader, all-encompassing. Everyone would be covered regardless of their sexual orientation or the nature of their sex life (for example, who their partners are would be covered). Sexual orientation would potentially be included in sexual life. Judicial interpretation would be necessary to confirm this (no case law dealing with this exists). The same goes for 'personal life' – it is broader than 'sexual orientation', potentially covering it.

¹¹⁴ 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).

¹¹⁵ Protection of Personal Data Act, Article 5 (2.1).

¹¹⁶ Protection of Personal Data Act, Article 5 (2.3).

¹¹⁷ Protection of Personal Data Act, Article 5 (2.4).

- 4) the data have been published by the person concerned or their collection is necessary for rights enforcement in court;¹¹⁸
- 5) this is necessary for medical prevention or diagnostics or provision of health services, provided that the data are processed by a medical professional or another person legally under a duty to keep a professional secret;¹¹⁹
- 6) this is only for journalistic or artistic purposes, provided that the right to privacy of the person concerned is not infringed;¹²⁰
- 7) or a special law provides for it.¹²¹

No law provides for the collection of ground-disaggregated data explicitly for purposes of equality litigation or policies.¹²² Public bodies taking positive measures do use statistics to design such measures.¹²³ Statistics are collected either by the National Statistical Institute, a public institution governed under the Statistics Act, or by public services themselves or by private research agencies on commission.¹²⁴

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.¹²⁵ 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.¹²⁶

b) Practice

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

In the past, Sofia trial court judges have rendered several decisions in cases concerning sex quotas for admission to university. The courts have accepted as a statistically established fact that women with higher academic scores were 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.¹²⁷

¹¹⁸ Protection of Personal Data Act, Article 5 (2.5).

¹¹⁹ Protection of Personal Data Act, Article 5 (2.6).

¹²⁰ Protection of Personal Data Act, Article 5 (2.7).

¹²¹ Protection of Personal Data Act, Article 5 (2.2).

¹²² While 'data collection [...] necessary for rights enforcement in court' (point (4)), could theoretically be construed as also being applicable to equality rights, this is not expressly stated 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 policy or law-making ends. Furthermore, personal data are not statistical data. In addition, 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.

¹²³ 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 section on 'Analysis of the situation', available at: www.nccedi.government.bg/upload/docs/NRP_07.03.2006_Final_2.htm (in BG) (this programme's timeline has ended but there has been no replacement); the Health Strategy for Persons in Unequal Positions Belonging to Ethnic Minorities, the section on 'Identification of the problem', available at: www.nccedi.government.bg/upload/docs/zdravna_strategia_prieta.htm (in BG).

¹²⁴ 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 research agencies gather statistics of both types.

¹²⁵ Civil Procedural Code, Article 12.

¹²⁶ Civil Procedural Code, Article 12 in conjunction with Article 10.

¹²⁷ Inter alia, Plovdiv District Court, Decision No. 185 in civil case No. 1330/2005, 1 February 2006; Plovdiv Regional (appeals) Court, Decision No. 1934 of 24 October 2006 in civil case No. 862/2006; and Supreme Court of Cassation, Decision No. 1302 in civil case No. 1602/2006, 28 November 2007; PADC, Decision No.

In 2018, the SAC found discrimination against a category of patients who were denied publicly funded treatment as opposed to another category of patients by relying on statistical data presented by an expert in the case who compared two categories of patients in terms of, inter alia, the prevalence, consequences and other relevant characteristics of their respective diseases.¹²⁸

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Bulgaria, harassment is prohibited in national law. It is defined. In the 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 the PADA is universal: anyone (including a legal person) may be a victim and everyone (including legal persons) is bound by the prohibition. The material scope of the PADA is universal as well: the bans apply to all rights and legitimate interests. 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, the PADC and the courts have found harassment.¹²⁹

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'.¹³⁰ However, in 2018, the PADC expressly held that intent was irrelevant to finding harassment.¹³¹ In 2018, an administrative court correctly held that a comparison was irrelevant for the purposes of establishing harassment (as opposed to direct or indirect discrimination).¹³² In some cases, the courts have erroneously applied justification reasoning (relevant to indirect discrimination) to harassment (hate speech) cases.¹³³

In 2018, the SAC confirmed a lower-court decision that maintaining an inaccessible urban environment constituted harassment of a person with disabilities.¹³⁴ The SAC termed harassment 'the highest' and 'most severe' form of discrimination. The SAC further confirmed a decision that denying, by secondary legislation, a certain category of patients free treatment of their disease amounted to harassment.¹³⁵ In addition, the SAC confirmed a decision qualifying as harassment the treatment of an employee (a trade union representative who was made to perform a series of tasks below her post for almost two years, as a means of pressure by management).¹³⁶ In this case, using the concept of harassment in a novel way, the court correctly reflected the nature of the impugned treatment – management systematically humiliated the complainant, using the organisational hierarchy to her detriment, in order to punish her for her trade unionism.

58 in case No. 10/2006, 29 November 2006. These 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.

¹²⁸ Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016.

¹²⁹ For instance, PADC Decision No. 450 of 20 November 2018 in case No. 180/ 2017; Burgas Administrative Court, Decision No. 564 of 23 March 2018 in case No. 1786/ 2017; Supreme Administrative Court, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

¹³⁰ SAC Decision No. 2368 of 1 April 2016 in case No. 7838/2015, p. 2.

¹³¹ PADC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017.

¹³² Burgas Administrative Court, Decision No. 564 of 23 March 2018 in case No. 1786/ 2017.

¹³³ For instance, Burgas Administrative Court, Decision No. 564 of 23 March 2018 in case No. 1786/ 2017; Supreme Administrative Court, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

¹³⁴ SAC, Decision No. 356 of 10 January 2018 in case No. 8993/2016.

¹³⁵ SAC, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016.

¹³⁶ SAC, Decision No. 4228 of 2 April 2018 in case No. 7771/ 2016.

The PADC had found discrimination based on age (and trade union affiliation, also a protected ground under the PADA). The SAC held the employee was deliberately humiliated.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Bulgaria, the employer and the employee are liable. Any individual who performs an act of discrimination, including harassment, is liable. In addition, employers are liable for compensation for damages ensuing from the actions of their employees or others carrying out work for them. This is a matter of general tort law, applicable to any legal person.¹³⁷ Furthermore, 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.¹³⁸ If an employee suffers harassment in the workplace by a third party and complains about it to the employer, the latter has a duty to take action to stop the harassment.¹³⁹ 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. The PADA bans incitement to discrimination, going beyond the directives, and defines that to expressly include instructions to discriminate.¹⁴⁰ However, this definition may not be compatible with the directives because it requires direct intent. In many cases, both the PADC and the courts have qualified public hate speech as incitement to discrimination.¹⁴¹

In 2018, the SAC held that there was no legal definition of 'incitement to discrimination' (under the PADA there is) and proceeded to define the concept, based on doctrine, as 'creating favourable conditions for third parties to commit an act of discrimination by using expression to influence beliefs, values, attitudes regarding groups defined by a protected ground'.¹⁴² According to this ruling by the SAC, in the case of incitement, 'ideas, beliefs, desires, information are manifested in statements aimed at, and capable of, persuading an addressee to treat unfavourably third parties based on grounds of difference. [...] convictions are expressed that, in terms of their content and manner of expressing, are not protected by the right to free expression [...] as they do not contribute to forming democratic opinions or democratic will'. Based on this, the SAC went on to justify what the author of this report would term extreme hate propaganda against Syrian refugees by an MP/ journalist member of the xenophobic Ataka party. The court did not find incitement to discrimination, including an instruction to discriminate.

In Bulgaria, instructions do explicitly constitute a form of discrimination. Under the 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

In Bulgaria, the instructor and the discriminator are liable.¹⁴³ 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.

¹³⁷ Bulgaria, Obligations and Contracts Act (*Закон за задълженията и договорите*), Article 49.

¹³⁸ PADA, Article 8.

¹³⁹ PADA, Article 17.

¹⁴⁰ PADA, Article 5 in conjunction with Additional Provisions, § 1 (5).

¹⁴¹ For instance, PADC Decision No. 450 of 20 November 2018 in case No. 180/ 2017.

¹⁴² SAC, Decision No. 7863 of 12 June 2018 in case No. 697/ 2017.

¹⁴³ PADA, Article 71 and Article 78.

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 on employers to provide reasonable accommodation for people with disabilities is included in the law, but is not defined. The PADA, Article 16, provides for accommodation for people with disabilities in employment.¹⁴⁴ The limit of the duty is when 'costs are unfoundedly large and would seriously hinder' the employer.¹⁴⁵ An identically-worded duty for employers is reproduced in the IPDA.¹⁴⁶ Other than this wording, there is no guidance under the law on what is 'reasonable' or a 'disproportionate burden' (these terms are not used in the legislation; as stated above, 'costs are unfoundedly large and would seriously hinder' is used instead to denote unreasonable or disproportionate). The duty applies to all employment relationships. It covers successful job applicants, as well as employees. As it refers to 'the workplace', it arguably does not cover people undergoing vocational training. There are no criteria in the law for assessing the extent of the duty.

According to 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.¹⁴⁷ This duty pre-dates both the PADA and the IPDA, as well as the directive.¹⁴⁸ It has no disproportionate burden limit. It is based on an instruction by the health authorities. An employer who fails to comply with such an instruction owes the employee concerned compensation.¹⁴⁹

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 their civil service to be carried out'.¹⁵⁰

According to the Healthy and Safe Working Conditions Act, employers are under a duty to provide the appropriate facilities for employees with reduced working capacity, e.g. people with disabilities, in their workplaces.¹⁵¹ Employers are to be assisted and consulted by special occupational health authorities in adapting jobs to employees' capabilities, considering their physical and mental health, by special labour medicine authorities.¹⁵²

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

- b) Practice and case law

In practice, the SAC has qualified as a denial of reasonable accommodation (using the phrase 'reasonable facilitations' (*'разумни улеснения'*)) a violation, which is outside the scope of Directive 2000/78/EC, while arguably within the scope of the pending Equal

¹⁴⁴ 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'.

¹⁴⁵ PADA, Article 16.

¹⁴⁶ IPDA, Article 24.

¹⁴⁷ Bulgaria, Labour Code (*Кодекс на труда*), Article 314. Such accommodation can include both adjustments to working conditions for the same job or reassignment to another job.

¹⁴⁸ The Labour Code, including this particular provision, has been in force since 1987.

¹⁴⁹ Labour Code, Article 317 (4).

¹⁵⁰ Bulgaria, Civil Servant Act (*Закон за държавния служител*), Article 30.

¹⁵¹ Bulgaria, Healthy and Safe Working Conditions Act (HSWCA) (*Закон за здравословните и безопасни условия на труд*), latest amendments 5 December 2017, Article 16 (1.4).

¹⁵² 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)).

Treatment Directive. The case in question was the only one to be decided in 2018 invoking the concept of reasonable accommodation. It concerned a denial of access to public funding for medical equipment/ treatment brought by a person with a disability. The SAC confirmed that a governmental failure to provide, under secondary legislation, full funding for a special piece of medical equipment needed for the purposes of a particular disability constituted a denial of 'reasonable facilitations' (reasonable accommodation) and an act of discrimination under the CRPD and ICCPR (as well as a violation of general mainstreaming/ positive duties for authorities under the PADA).¹⁵³ The court held that, for purposes of establishing such a violation, no comparison was needed. The SAC invoked the CRPD (Article 2) definition of 'reasonable facilitations' (reasonable accommodation).

The case law does not give guidance on how to interpret 'reasonable accommodation' and/or 'disproportionate burden'. There is no case law to suggest that a failure to comply with general accessibility or building regulations would be relevant, i.e. an employer would be barred from arguing that a disproportionate burden exists if they have not met relevant regulations. Case law on failure to secure accessibility is abundant, but it does not qualify this as denial of reasonable accommodation.

There is no provision or case law on taking into account the availability of financial assistance from the State.

c) Definition of disability and non-discrimination protection

The definition of a disability for the purposes of claiming reasonable accommodation is no different from the definition for claiming protection from discrimination in general. The definitions of disability in the IPDA, both *disability* (general) and *long-term disability*, apply for all purposes under the law, including non-discrimination and reasonable accommodation. In addition, the courts increasingly and relatively consistently rely on the CRPD concerning the concept of disability.

d) 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 the PADA or IPDA. Under the PADA, unlike other forms of conduct, such as building or maintaining an inaccessible public architectural environment, a denial of reasonable accommodation is not defined as a form of discrimination. There is no provision on the relation of such a denial to direct or indirect discrimination. The same applies for a failure to meet accommodation duties under the IPDA, the Labour Code and the Healthy and Safe Working Conditions Act.

In a 2018 case, the SAC confirmed that a governmental failure to provide, under secondary legislation, what the SAC termed 'reasonable facilitations' (reasonable accommodation), constituted discrimination under the CRPD and the ICCPR, as well as a violation of general mainstreaming/ positive duties for authorities under the PADA.¹⁵⁴ While this case obviously did not concern an individualised measure, the court qualified the denial as a denial of 'reasonable facilitations' (reasonable accommodation) (as well as an act of discrimination within the meaning of the CRPD and ICCPR, *and* a breach of the authorities' duties to take special, equalising measures. This ruling is an instance of a remarkable, growing trend on the part of the Bulgarian judiciary to utilise discrimination law concepts, including that of reasonable accommodation, in order to enforce effective socio-economic rights for entire categories of people with disabilities. This is a fascinating, exceptional phenomenon, which well deserves studying.

Under the PADA, there is a disproportionate burden defence for employers and educators, namely where the costs are 'unreasonably high' or would 'seriously hinder' the

¹⁵³ SAC, Decision No. 5302 of 24 April 2018 in case No. 11143/ 2016

¹⁵⁴ SAC, Decision No. 5302 of 24 April 2018 in case No. 11143/ 2016.

organisation. Under the IPDA, employers have the same defence, but public bodies and universities have absolute duties, with no defence.

According to general PADA violation provisions, a failure to provide reasonable accommodation is subject to a fine 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 the PADA, the shifting burden of proof would apply if the court or the PADC agrees that a case against a failure to provide reasonable accommodation constitutes 'proceedings for protection against discrimination' within the meaning of the PADA, Article 9.

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

In Bulgaria, there is a legal duty to provide reasonable accommodation for people with disabilities outside the area of employment. Article 32 of the PADA provides for reasonable accommodation in education. The limit of the duty is, as in employment, the 'costs are unreasonably high and would seriously hinder' the educator.¹⁵⁵ The IPDA also provides for accommodation duties for both schools and universities.¹⁵⁶ The IPDA duties are absolute (no disproportionate burden defence). According to the IPDA, the Minister of Education and Science has a duty to provide children with disabilities with a supportive environment for their integrated education.¹⁵⁷ 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 country. Furthermore, 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.¹⁵⁸ 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 also have absolute accommodation duties.¹⁵⁹

The Ordinance on Inclusive Education¹⁶⁰ (the Ordinance) 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'.¹⁶¹

The term 'reasonable facilitations' used above by the author of this report to translate the Ordinance's language of *'разумни улеснения'* may 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 is likely to have adopted the phrase from Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD), which uses 'reasonable accommodation', as well as 'facilitating'. It is unclear whether the drafters intended *'разумни улеснения'* ('reasonable facilitations') to be construed as 'reasonable accommodation' and to be applied by domestic bodies in line with 'reasonable accommodation' under the PADA, which derives the concept from EU law.

¹⁵⁵ PADA, Article 32.

¹⁵⁶ IPDA, Article 17 and Article 20.

¹⁵⁷ IPDA, Article 17 (2).

¹⁵⁸ IPDA, Article 18.

¹⁵⁹ IPDA, Article 20.

¹⁶⁰ Bulgaria, Ordinance on Inclusive Education (OIE) (*Наредба за приобщаващото образование*), entry into force 27 October 2017, latest amendments 18 December 2018, Additional Provisions, § 1.2.

¹⁶¹ OIE, Additional Provisions, § 1.8.

The Ordinance provides for equal access to education through reasonable facilitations and various forms of accessibility and other resources.¹⁶² It defines reasonable facilitations as a means to make textbooks and other learning materials accessible.¹⁶³ It specifically provides for reasonable facilitations for taking school leaving exams.¹⁶⁴

According to 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.¹⁶⁵ Under that law, people with disabilities, in general, are entitled to the necessary conditions for various sports, although the law does not mention whose duty this is.¹⁶⁶

In a case of denial of access to public funding for medical equipment/ treatment brought by a person with a disability, the SAC confirmed that a governmental failure to provide, under secondary legislation, full funding for a special piece of medical equipment constituted a denial of 'reasonable facilitations' (reasonable accommodation) – discrimination under the CRPD and ICCPR (as well as a violation of general mainstreaming/ positive duties for authorities under the PADA).¹⁶⁷ The court held that, for the purposes of establishing such a violation, no comparison was needed. The SAC invoked the CRPD definition of 'reasonable facilitations' (reasonable accommodation).

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

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

Religion/ belief

Under Article 13 (2) of the PADA, 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]'.¹⁶⁸ There has been no litigation on record as yet based on this provision. It is unknown whether it is applied in practice or not.

¹⁶² OIE, Article 102.

¹⁶³ OIE, Article 105.

¹⁶⁴ OIE, Article 107.

¹⁶⁵ Bulgaria, Physical Education and Sports Act (*Закон за физическото възпитание и спорта*) (repealed 18 October 2018, in force as of 18 January 2019, after the cut-off date for this report), Article 21 (4).

¹⁶⁶ Physical Education and Sports Act, Article 33 (1).

¹⁶⁷ SAC, Decision No. 5302 of 24 April 2018 in case No. 11143/ 2016

¹⁶⁸ Under discrimination law, there is no definition of religion or belief in this or any other context.

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 contained in the relevant national laws transposing the directives. Non-nationals, as well as nationals are entitled to protection from discrimination on any ground other than nationality.¹⁶⁹ Legal residence is irrelevant to entitlement to anti-discrimination protection; only factual being within the territory is a condition. However, non-nationals are protected from discrimination based on nationality only insofar as such discrimination has no basis in primary legislation.¹⁷⁰ Parliament may make law that discriminates against non-nationals, but executive bodies and private parties have no discretion to make such decisions (including secondary legislation). Parliament is free to adopt discriminatory laws based on nationality, with no constitutional limit to its discretion.¹⁷¹

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.¹⁷² The courts and the PADC have generally recognised the standing of legal persons as victims.¹⁷³ In 2018, the Supreme Administrative Court (SAC), in a hate speech case brought by a minority denomination, expressly held, relying on the relevant PADA provision, that a denomination, understood as a legal entity representing a religious community, had standing to litigate in defence of all its members (believers) targeted by the alleged harassment.¹⁷⁴ 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. The PADA makes no distinction between individuals and legal entities in terms of the ban on discrimination. The ban is expressly applicable *erga omnes*, including all legal persons.¹⁷⁵ Case law has consistently recognised this, with the exception of two 2014 cases, in which the SAC held that a perpetrator of discrimination could only be a natural person (a legal person could be a perpetrator only exceptionally, in cases expressly provided for by law).¹⁷⁶ According to these SAC rulings, a public authority could not be a perpetrator (only an individual exercising an authority's competence). These rulings were contrary to the PADA and contradicted many rulings rendered by the SAC in previous years, as well as in the years since, which have found legal persons liable as discriminators. In 2018, the SAC confirmed that private legal persons were liable in at least four cases¹⁷⁷ and public legal persons in at least three

¹⁶⁹ PADA, Article 3 (1).

¹⁷⁰ PADA, Article 7 (1.1).

¹⁷¹ Constitution, Article 26 (2).

¹⁷² PADA, Article 3 (2).

¹⁷³ For instance, SAC Decision No. 5539 of 11 May 2016 in case No. 3732/2016 where the SAC expressly refuted the lower court's reasoning that an NGO could not be a victim of discrimination, recognising a legal person's victim status derived directly from the PADA.

¹⁷⁴ SAC, Decision No. 4238 of 2 April 2018 in case No. 70/2017.

¹⁷⁵ PADA, Article 6 (1).

¹⁷⁶ SAC, Decision No. 5645 in case No. 15991/2013 and Decision No. 15637 in case No. 1925/2014.

¹⁷⁷ For instance, SAC, Decision No. 4238 of 2 April 2018 in case No. 70/2017, Decision No. 5516 in case No. 187/ 2017, Decision No. 6072 in case No. 1225/ 2017, Decision No. 7863 in case No. 697/ 2017.

cases.¹⁷⁸ The PADC has also ruled against a company.¹⁷⁹ The Supreme Court of Cassation (final instance in civil cases) has also ruled against a public legal person in at least one case.¹⁸⁰

In 2018, the Supreme Court of Cassation ruled twice that both an individual perpetrator of an act of discrimination and that individual's employer or contractor (where an act of discrimination was perpetrated in the course of an individual carrying out work for an employer or contractor) were liable for the impugned act (in terms of damages).¹⁸¹

In 2017, the SAC ruled in at least five cases against public authorities, thereby also recognising that legal persons can be liable under the PADA.¹⁸² In two cases in 2017, the SAC ruled on general grounds against legal persons contrary to the above SAC proposition that legal persons are only liable in exceptional cases provided for by law.¹⁸³ In addition, in a 2017 decision, the SAC expressly rescinded the lower court's finding that the lack of a concrete victim meant that no discrimination was present.¹⁸⁴ The SAC ruled that, in this case, inequality affected a category of non-identified individuals. In the same case, the SAC held that the violation resulted, in part, from the effect of legal norms, recognising that legislation as such can indeed be discriminatory. Similarly, in another 2017 case, the SAC confirmed a PADC finding that a piece of secondary legislation (for which a public body, i.e. a legal person, was liable) was discriminatory.¹⁸⁵

On the other hand, in a different 2017 case, the 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 relevant Administrative Procedure Code proceedings.¹⁸⁶ With this, the SAC reiterated its controversial 2014 proposition that discrimination provided for under legal rules may not be declared to be discrimination. The case law remains contradictory and unstable. Ideally, an amendment to the PADA would expressly clarify that legislative norms can also constitute discrimination and that PADA remedies are applicable to such discrimination.

In 2016, the SAC confirmed a ruling by the lower-instance court that a legal person found liable for discrimination could not incur a fine as, under the PADA, legal persons could only be sanctioned for not having complied with a specific duty under the PADA and not for having discriminated.¹⁸⁷ The lower-instance court, SCAC, had repealed a financial sanction imposed by the PADC, reasoning that the PADC had not specified a duty under the PADA that the company had failed to comply with. SCAC held that, under the PADA, only natural persons could be fined for committing discrimination and not legal persons. The SAC confirmed that ruling.

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

a) Protection against discrimination

¹⁷⁸ For instance, SAC, Decision No. 356 in case No. 8993/ 2016, Decision No. 4931 in case No. 10370/ 2016, Decision No. 13854 in case No. 12257/ 2017.

¹⁷⁹ PADC, Decision No. 450 in case No. 180/ 2017.

¹⁸⁰ For instance, Supreme Court of Cassation, Ruling No. 478 in case No. 462/ 2018.

¹⁸¹ Supreme Court of Cassation, Ruling No. 266 of 23 March 2018 in case No. 4603/2017; Decision No. 144 of 8 June 2018 in case No. 4603/2016.

¹⁸² SAC, 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.

¹⁸³ SAC, 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.

¹⁸⁴ SAC, Decision No. 438 of 13 January 2017, see details below in Section 12.2.

¹⁸⁵ SAC, Decision No. 14631 of 30 November 2017 in case No. 4698/ 2016.

¹⁸⁶ SAC, Decision No. 6943 of 2 June 2017 in case No. 1980/ 2017.

¹⁸⁷ SAC, Decision No. 13542 of 12 December 2016 in case No. 10756/ 2015.

In Bulgaria, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.¹⁸⁸ The national provisions comply with the directives.

b) Liability for discrimination

In Bulgaria, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.¹⁸⁹ The prohibition is expressly *erga omnes*. In 2018, the PADC and the courts ruled against public officials or bodies in at least 18 cases.¹⁹⁰ However, the case law is contradictory regarding the liability of public bodies – see above in Section 3.1.2 b). For example, in one case, the SAC held that the PADC was not competent to consider an administrative act delivered by an executive body (a minister, in this case), that had entered into force.¹⁹¹ The SAC further held that the PADC was not competent to consider (allegedly discriminatory) actions of judges carried out in the course of exercising their magistrates' competencies or to make injunctions for judges to undertake, or to abstain from undertaking, certain actions, on the grounds of the independence of the judiciary.¹⁹² On the other hand, courts as legal entities were held liable (for damages) by the Supreme Court of Cassation for discriminatory judgments delivered by judges in their ranks.¹⁹³

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 and holding statutory office, for the five grounds.¹⁹⁴ The relevant provisions consist of the general ban on discrimination, which has universal scope,¹⁹⁵ and certain specific employment discrimination bans. The latter provide examples of the conduct prohibited under the general discrimination ban (e.g. 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 developing in them). These specific provisions constitute Title I of the PADA: 'Protection in the exercise of the right to labour'. In 2018, the courts decided a number of cases brought by (former) employees and civil servants.¹⁹⁶

¹⁸⁸ PADA, Article 3 (1).

¹⁸⁹ PADA, Article 6 (1).

¹⁹⁰ For instance, SAC, Decision No. 356 in case No. 8993/ 2016, Decision No. 4931 in case No. 10370/ 2016, Decision No. 13854 in case No. 12257/ 2017, Decision No. 363 in case No. 9234/ 2016, Decision No. 2138 in case No. 13552/ 2016, Decision No. 5302 in case No. 11143/ 2016, Decision No. 4151 in case No. 494/ 2015, Decision No. 6558 in case No. 12550/ 2017, Decision No. 10283 in case No. 6150/ 2018, Decision No. 13700 in case No. 8499/ 2018, Decision No. 7706 in case No. 4602/ 2018, Decision No. 9270 in case No. 1069/ 2017, Decision No. 7863 in case No. 697/ 2017. PADC, Decision No. 450 in case No. 180/ 2017, Decision No. 144 in case No. 28/ 2018. Supreme Court of Cassation, Ruling No. 478 in case No. 462/ 2018. Sofia City Administrative Court, Decision No. 7471 in case No. 9628/ 2018. Burgas Administrative Court, Decision No. 564 in case No. 1786/ 2017.

¹⁹¹ SAC, Decision No. 555 of 15 January 2018 in case No. 12379/ 2016.

¹⁹² SAC, Ruling No. 10102 of 24 July 2018 in case No. 7048/ 2018.

¹⁹³ Supreme Court of Cassation, Ruling No. 478 of 18 June 2018 in case No. 462/ 2018.

¹⁹⁴ PADA, Article 6 (1) and Articles 12-28.

¹⁹⁵ 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.

¹⁹⁶ For instance, SAC, Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017, Decision No. 4727 of 12 April in case No. 2769/ 2017. Supreme Court of Cassation, Ruling No. 368 of 18 May 2018 in case No. 4803/ 2017, Ruling No. 401 of 28 May 2018 in case No. 188/ 2018.

In addition, the IPDA, which also bans disability discrimination, is applicable to this field, inter alia.

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, self-employment or 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.¹⁹⁷

In addition, the IPDA, which also bans disability discrimination, is applicable to this field, inter alia.

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

In Bulgaria, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.¹⁹⁸

In addition, the IPDA, which also bans disability discrimination, is applicable to this field, inter alia.

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 prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.¹⁹⁹

In addition, the IPDA, which also bans disability discrimination, is applicable to this field, inter alia.

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 area: 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.²⁰⁰

In addition, the IPDA, which also bans disability discrimination, is applicable to this field, inter alia.

¹⁹⁷ PADA, Article 6 (1), Articles 12-28 and Article 37 (2).

¹⁹⁸ 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.'

¹⁹⁹ 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.

²⁰⁰ PADA, Article 6 (1) and Article 36.

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

In Bulgaria, national legislation prohibits discrimination in social protection, including social security and healthcare as formulated in the Racial Equality Directive.²⁰¹ All five grounds are covered.

The IPDA, which also bans disability discrimination, is applicable to this field too, inter alia.

a) Article 3.3 exception (Directive 2000/78)

The PADA transposes the exception in Article 3 (3) of Directive 2000/78/EC with respect to age, and no other ground, as concerns eligibility for pension ages only.²⁰²

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

In Bulgaria, national legislation implicitly prohibits discrimination in social advantages as formulated in the Racial Equality Directive.²⁰³ All five grounds are covered.

The IPDA, which also bans disability discrimination, is applicable to this field too, inter alia.

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

In Bulgaria, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.²⁰⁴ All five grounds are covered. The scope of protection under the PADA is universal: discrimination is banned with regard to the exercise of all rights and freedoms (Article 6 (1)). Therefore, any discriminatory treatment in school would be covered, including educational content.

In addition, according to the Pre-School and School Education Act, everyone shall have a right to education and inclusive education is an integral part of the right to education.²⁰⁵ Equal access to quality education and the inclusion of every child, as well as equal treatment and non-discrimination, are among the principles of education.²⁰⁶ Compulsory pre-school and school education is free.²⁰⁷

The IPDA, which also bans disability discrimination, is applicable to this field too, inter alia.

a) Pupils with disabilities

In Bulgaria, the general approach to education for pupils with disabilities does raise problems. While under the legislation integrative (inclusive) education is the rule,²⁰⁸ and

²⁰¹ PADA, Article 6 (1).

²⁰² PADA, Article 7 (1.8).

²⁰³ 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 the author is aware, to deny the universal, all-encompassing scope of the PADA.

²⁰⁴ 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.

²⁰⁵ Pre-School and School Education Act (PSEA), adopted 13 October 2015, entered into force on 1 August 2016, last amendments 29 December 2018, Article 7 (1-2).

²⁰⁶ PSEA, Article 3 (2.3-4).

²⁰⁷ PSEA, Article 9 (1-3).

²⁰⁸ Bulgaria, Pre-School and School Education Act (PSEA) (*Закон за предучилищното и училищното образование*), entry into force 1 August 2016, latest amendments 29 December 2018, and secondary legislation – the Ordinance on Integrative Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, latest amendments 18 December 2018.

declared an integral part of the right to education,²⁰⁹ in practice, inclusion 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 inclusion are inadequate and measurable indicators for progress are lacking, with few schools and few children included in integrative change in practice;²¹⁰ 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 attend a school are enrolled in a form of special (not mainstream) school;²¹¹ not all kindergartens and schools are physically accessible.²¹²

Furthermore, under the legislation itself, children with sensory (hearing or sight) impairments are channelled into special schools for their category.²¹³ As for children with other disabilities, while, according to the law, kindergartens and schools are under a duty to accept them,²¹⁴ and they may not be segregated into separate classes or groups,²¹⁵ they may still 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.²¹⁶ While the law stipulates that this is to be done 'as an exception, when educational objectives cannot be achieved through another form of support',²¹⁷ this wording is broad and there is no legal definition of what it means for educational objectives not to be achievable 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 for why educational objectives could not be realised other than in a special 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. It seems to the author of this report that it would be possible for marginalised, indigent parents to be put under pressure by educators, intellectual health specialists or officials to apply for special school referral on grounds that 'there is no other way'.

No public data are available on the numbers of children segregated in special schools, excluded from any schooling or integrated into 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 into mainstream schooling, using the so-called 'resource support'.²¹⁸ A large proportion 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.²¹⁹

In 2018, the Supreme Administrative Court (SAC) confirmed a decision by Sofia City Administrative Court (SCAC) awarding damages to the mother of a child with disabilities

²⁰⁹ PSEA, Article 7 (2).

²¹⁰ National Network for Children, 'Notebook' 2017, available at: https://nmd.bg/wp-content/uploads/2017/05/A4_bejejn2017_web.pdf (in BG), pp. 83-84.

²¹¹ Lumos Foundation, An assessment of deinstitutionalisation results for children and young adults transferred into residential care centres in the community, available at: https://lumos.contentfiles.net/media/documents/document/2017/02/Bulgarian_Outcomes_Report_ENG.pdf, p. 32.

²¹² Shadow report under the CRPD by the Bulgarian Helsinki Committee, May 2017, available at: 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).

²¹³ PSEA, Article 44 (1.1).

²¹⁴ PSEA, Article 192 (1).

²¹⁵ PSEA, Article 99 (5).

²¹⁶ PSEA, Article 145 (5) and Article 194 (1).

²¹⁷ PSEA, Article 194 (1).

²¹⁸ Shadow report under the CRPD by the Bulgarian Helsinki Committee, May 2017, available at: http://bghelsinki.org/media/uploads/special/2017-int_crp_d_ico_bgr_27646_e.pdf, p. 63, 65.

²¹⁹ 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, p. 66.

who was not admitted for full-time care to a public kindergarten on grounds of his disability (he was only taken for an hour and a half daily).²²⁰ His mother obtained a decision by the PADC finding direct discrimination and brought court proceedings, winning pecuniary damages resulting from enrolling her child in an alternative, privately owned kindergarten (BGN 5 382 (EUR 2 691)).

b) Trends and patterns regarding Roma pupils

In Bulgaria, there are specific societal patterns 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. These schools are predominantly Roma, i.e. segregated, and are 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 special schools for students with 'special educational needs'²²¹ (under the law, 'centres for special educational support', or 'special groups', or 'field' ('изнесени') classes/ groups in social services in the community) (over-representation);
3. children in schools for juvenile delinquents (disproportionate representation).

The PADA bans racial segregation as a form of discrimination (Article 5). However, it defines it in a way that is not compatible with European law because the definition explicitly requires the state of separation to be 'forced'.²²² It thus implies that segregation may be chosen, i.e. that segregated people 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.²²³

According to the Pre-School and School Education Act, kindergartens and schools may not segregate children of 'a different' ethnicity in separate groups or classes (since 1 August 2016).²²⁴ However, there is no ban under that act on segregating children in separate kindergartens or schools.

In a few cases brought to court to challenge all-Roma schools,²²⁵ the 'forced' element in the PADA definition of segregation 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 an administrative decision'.²²⁶ However, the court found that the students suffered indirect discrimination because the school curricula and processes did not take account of their ethnic and linguistic differences. In two other cases, the 'forced' hurdle prevented any

²²⁰ SAC, Decision N. 5516 of 26 April 2018 in case No. 187/ 2017.

²²¹ Under the law, 'special educational needs' are defined as a child's or a student's educational needs 'that might arise in cases of sensory disabilities, physical disabilities, multiple disabilities, intellectual impediments, language and speech impairments, specific learning ability impairments, autistic spectrum disorders, emotional and behavioural disorders' (PSEA, Additional Provisions, § 1.27).

²²² PADA, Additional Provision, § 1.6.

²²³ 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 5 June 2008; European Court of Human Rights, *Orsus v. Croatia*, judgment of 16 March 2010 (GC).

²²⁴ PSEA, Article 62 (4) and Article 99 (4) and (6).

²²⁵ In one case, segregation of *Turkish* children in separate classes was also successfully challenged before the equality authority (PADC, decision No 91 of 8 November 2007 in case No. 28/2007).

²²⁶ 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 1 August 2008, civil case No. 6402 of 2007.

protection.²²⁷ 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 to special schools.²²⁸

The PADC did not specify the extent of the over-representation it found.²²⁹ According to studies relevant at the time, Roma represented between 42 % and 51 % of the special schools' student body. In a 2007 study, the Roma Education Fund found that 'still, the majority of children in special schools are Roma or of Roma origin'.²³⁰ This study further specified that '[t]here are no data on the exact number of Roma children in [special] schools, but it is generally said that they are around two thirds of [all pupils there]'.²³¹ The Roma Education Fund findings also referred to a 2004 study by the State Child Protection Agency, according to which the share of ethnic Bulgarian children in special schools was 42.5 %, the rest being minority students, including Roma, Turkish and others.²³² The Roma Education Fund further claimed that, 'in certain special schools, the share of Roma reaches 90-100 %'.²³³

In addition, a 2006 study by the Sofia branch of Save the Children UK found that special schools included both children with disabilities and 'socially neglected' children and, while 'accurate statistics were lacking', a 'significant proportion' of 'socially neglected' children were Roma.²³⁴ Similarly, a 2008 study by the Sofia branch of the Open Society Institute found that Roma children are 'often' educated in special schools, a 'large proportion' of them being enrolled in such schools for 'purely social reasons', as a result of which Roma children are 'over-represented' in special schools.²³⁵ The latter study referred to a 2002 study by the Bulgarian Helsinki Committee, according to which at least 51 % of the total number of special school students were Roma.

Current statistics are lacking. The most recent data are from 2014 and are incomplete. In a 2014 study, the FRA found that, in Bulgaria, the percentage of Roma children up to the age of 15 reported as having attended a special school or class 'mainly for Roma' was 14 %.²³⁶ This figure does not include students older than 15. In addition, it includes not

²²⁷ Blagoevgrad Regional Court, Decision No. 139 of 1 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 Roma 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.

²²⁸ PADC, Decision No. 80 of 16 October 2007.

²²⁹ PADC, *Годишен отчет 2007 г.* (Annual Report for 2007), p. 79 (in BG), available at: http://www.kzd-nondiscrimination.com/layout/images/stories/pdf/annual_report_07.pdf.

²³⁰ Roma Education Fund (2007), *Подобряване на образованието на ромите в България* ('Improving Roma education in Bulgaria') (in BG), p. 11, available at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

²³¹ Roma Education Fund (2007), *Подобряване на образованието на ромите в България* ('Improving Roma education in Bulgaria') (in BG), p. 30, available at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

²³² Roma Education Fund (2007), *Подобряване на образованието на ромите в България* ('Improving Roma education in Bulgaria') (in BG), p. 31, available at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

²³³ Roma Education Fund (2007), *Подобряване на образованието на ромите в България* ('Improving Roma education in Bulgaria') (in BG), p. 31, available at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

²³⁴ Save the Children (2006), *Интегрираното обучение – от концепцията към практиката* ('Integrated education – from concept to practice') (in BG), pp. 35-36, available at: http://www.ced.bg/uploads/project/SaveTheChildren_Final1.pdf.

²³⁵ Open Society Institute Sofia (2008), *Ромите в България* ('Roma in Bulgaria') (in BG), p. 32, available at: https://osis.bg/wp-content/uploads/2018/04/OSI_Publication_Roma_2.pdf.

²³⁶ FRA (2016), 'Education: The situation of Roma in 11 EU Member States', available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-roma-survey-dif-education-1_en.pdf, p. 48.

only students channelled into special schools but also students sent to racially segregated classes or schools, leaving the number of Roma children sent to special schools unclear.

According to the authorities, the situation has improved. In the 2015-2020 Strategy for Educational Integration of Ethnic Minority Children and Students (adopted in 2015) (the Strategy), the authorities claim that there is a 'complete limiting of the practice of placing healthy [Roma] children in special schools for social reasons', which is a 'significant success in the work of the Ministry of Education and Science'.²³⁷ This statement refers to data included in Annex No. 4 to the Strategy but these data only show a reduction of the overall number of children (regardless of ethnicity) placed in special schools: from 7 842 in the 2005/2006 school year, to 3 179 in the 2014/2015 school year. This does not appear to be proof of 'complete limiting of the practice of placing healthy [Roma] children in special schools for social reasons'.

The 2010-2020 Framework Programme for the Integration of Roma in Bulgarian Society (the Programme) features, as a priority, 'not allowing schooling of healthy Roma children in special schools' and 'taking out of special schools healthy students enrolled in preceding years'.²³⁸ (No estimates of the numbers of affected children are offered.) No specific measures to implement the 'not allowing schooling of healthy Roma children in special schools' priority are included in the Programme.

Overall, there appears to be no evidence available to support the official claim that at present no Roma students are channelled into special schools for no good reason. While, as mentioned above, current data are lacking, making it unclear whether there is ongoing large-scale unwarranted channelling of Roma students into special schools, it seems risky to assume that there therefore aren't any. In the light of the 2014 FRA findings mentioned above, revealing a significant Roma over-representation in special schools, and in the light of the absence of any information on the remedial measures, if any, taken since by the authorities, there is no basis on which to judge the effectiveness of any such measures, or their potential to eradicate the issue. Accordingly, the probability is not high that the issue has been resolved in the five years since 2014, a relatively limited period considering the institutional and cultural changes necessary, including (re-)training of relevant staff, to correct deficient practices that had existed for many years before. However, as the figures dropped from approximately 50 % in 2002 to around 14 % in 2014, it seems safe to conclude non-negligible progress is underway.

The above-mentioned PADC instructions contained in its 2007 decision were, as a whole, not complied with. While the applicable legislation has been replaced since (not for purposes of implementing the PADC instructions, but as a matter of general educational reform), with the Pre-school and School Education Act of 2016 and the Ordinance on Integrative Education of 2017, the new legislation does not incorporate all the measures that the PADC indicated in 2007. The one exception is a duty, under the legislation, for educators to provide additional Bulgarian language instruction for children whose mother tongue is different in order to support their educational integration.²³⁹

There is no relevant recent case law on record.

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

²³⁷ Стратегия за образователна интеграция на децата и учениците от малцинствата (2015-2020) (Strategy for Educational Integration of Ethnic Minority Children and Students). Available (in BG) at: <https://www.mon.bg/bg/143>, p. 8.

²³⁸ Рамкова програма за интегриране на ромите в българското общество (2010-2020) (Framework Programme for Integration of Roma in Bulgarian Society). Available (in BG) at: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bq-BG&Id=609>, p. 7.

²³⁹ PSEA, Article 16 and Article 178 (1.3).

In Bulgaria, national legislation prohibits discrimination in access to and supply of goods and services as formulated in the Racial Equality Directive.²⁴⁰ This is ensured by both the general, all-encompassing ban on discrimination and by the specific provision of Article 37 prohibiting 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. The IPDA, which also bans disability discrimination, is applicable to this field too, *inter alia*.

Under the legislation, a failure to adapt goods or a service to meet the needs of a person with a disability is not a separate form of discrimination. It could, however, fall under direct or indirect discrimination.

In 2018, the SAC confirmed a relevant decision by Sofia City Administrative Court, confirming a decision by the PADC.²⁴¹ The PADC had found that a mobile network operator discriminated against a person with disabilities by requiring all clients, including the complainant, to visit the company's offices in person in order to sign a service contract, while the complainant, a stroke and hip joint replacement survivor, was prevented from doing so due to mobility issues. The PADC ruled that the company's refusal to allow contracts to be closed by proxy disadvantaged people with disabilities, for which the company had failed to present any justification (indirect discrimination). The PADC ordered the company to immediately discontinue their practice of requiring in-person signing of contracts, to change their general terms in that respect and fined them BGN 2 500 (EUR 1 250).

It is not clear whether existing disability discrimination bans would be interpreted in court as an obligation to provide (design/ manufacture) goods which are usable by people with disabilities.

a) 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 or banks) and those only available privately (e.g. limited to members of a private association).²⁴²

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

In Bulgaria, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive.²⁴³ The provision is general, implicitly including housing. It covers all five grounds. The IPDA, which also bans disability discrimination, is applicable to this field too, *inter alia*.

In practice, refugees face serious difficulties in finding accommodation, for financial and other reasons. Landlords typically require advance payment for one to three months. In addition, based on anecdotal evidence, foreign nationals face race and religious discrimination, as well as discrimination against families with many children.²⁴⁴ As a result, the most vulnerable are at risk of homelessness.²⁴⁵

a) Trends and patterns regarding housing segregation for Roma

²⁴⁰ PADA, Article 6 (1) and Article 37.

²⁴¹ SAC, Decision No. 6072 of 10 May 2018 in case No. 1225/ 2017.

²⁴² PADA, Article 6 (1) and Article 37.

²⁴³ PADA, Article 6 (1).

²⁴⁴ See UNHCR Bulgaria (2016), p. 12, available at: www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf.

²⁴⁵ See UNHCR Bulgaria (2016), p. 12, available at: www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf.

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 transport, emergency medical aid, waste collection, policing and, for some, even electricity and water supplies. In many places, local authorities have for decades ignored Roma housing and infrastructure problems, investing nothing in the development of Roma residential areas. The authorities in many places 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.

The 2012 European Court of Human Rights (ECtHR) decision against Bulgaria in the *Yordanova and Others v. Bulgaria* case (collective forced eviction threatening Romani community)²⁴⁶ has not been implemented: no legislative amendments have been undertaken to place relevant authorities under a duty to consider, when making decisions about forced evictions, the individual circumstances of the people affected, including their special vulnerabilities, as well as the authorities' own failures to deal with the situation sooner, and to provide alternative accommodation where warranted so as not to reduce dependent people to homelessness. The implementation of this judgment, delivered in an emblematic case represented by the author of this report, is currently under enhanced supervision by the Committee of Ministers and the ECtHR.²⁴⁷

In the *Yuseinova and Others v. Bulgaria* (no. 30472/17) case pending before the ECtHR, (application communicated to the Government on 9 January 2018), eviction proceedings were brought against a number of Roma families. The applicants, represented by the author of this report, alleged that, if they were evicted and their homes demolished, there would be a violation of their right to respect for their family life and home, unless the authorities found a permanent adequate alternative solution to accommodate them without delay, keeping the members of each family together. The applicants also complained of deficiencies in the domestic procedure for deciding on eviction and demolition, and enforcing such decisions, which lacks a proper proportionality analysis. The applicants further alleged that their collective forced eviction and the demolition of their homes, in an arbitrary fashion after the authorities had tolerated them for many years and without accounting for the vulnerability of the families or providing them with an adequate shelter, would constitute an act of racial discrimination against them as Roma, given that non-Roma families would not be treated similarly.

In the *Dimitrova and Others v. Bulgaria* case, brought similarly on behalf of Roma families threatened by forced eviction, the ECtHR declared the complaints inadmissible (decision of 11 July 2017) for failure to exhaust domestic remedies (the Court found the application before the domestic court 'was initially chaotic and even after clarification remained unclear and unstructured' (para 75 of the decision)). In the *Aydarov and Others v. Bulgaria* case, declared inadmissible by the ECtHR (decision of 2 October 2018), also brought on behalf of Roma families threatened by forced eviction, the ECtHR did not grant interim relief under Rule 39 but requested information concerning the applicants' situation from the authorities, which prompted the latter to impose a temporary halt on a set of eviction enforcement proceedings.

The authorities generally do not ensure that no eviction takes place in the long run.

²⁴⁶ European Court of Human Rights, Application No. [25446/06](https://rm.coe.int/1680709740).

²⁴⁷ See Bulgaria's Country Factsheet by the ECtHR at: <https://rm.coe.int/1680709740>.

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.²⁴⁸ It is valid for all grounds. The wording 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.²⁴⁹ 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 what is necessary to accomplish it; [...]'. There is an inconsistency in wording between the directive and the PADA: rather than 'genuine, legitimate and justified', under the PADA the occupational requirement is 'genuine and determining'. However, that may not be material in practice. The 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'.²⁵⁰ This means that religious discrimination is allowed in access to religious education or training with no proportionality required. There is no wording in the law to prevent this exception leading to discrimination on grounds other than religion. There are no instances on record where this exception has resulted in discrimination on grounds of sexual orientation.

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. The PADA makes no such exception.

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, the PADA treats nationality as a protected ground, banning all forms of discrimination based on it in all fields of life.²⁵¹ It makes a significant exception, however, for differential treatment based on nationality provided for under primary legislation.²⁵² 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 the PADA, both nationality and a lack of any nationality are included in the concept of nationality as a protected ground.²⁵³

²⁴⁸ PADA, Article 7 (1.2).

²⁴⁹ PADA, Article 7 (1.3).

²⁵⁰ PADA, Article 7 (1.4).

²⁵¹ PADA, Article 4 (1).

²⁵² PADA, Article 7 (1.1).

²⁵³ PADA, Article 7 (1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

In Bulgaria, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law.²⁵⁴

In 2018, the SAC confirmed a lower-court decision, which repealed a PADC decision holding a local mayor accountable for harassment on grounds of national origin and origin against an indeterminate number of people, as well as incitement to race discrimination. The mayor had publicly opposed the enrolment of refugee children in the local school. The PADC imposed a fine of BGN 250 (EUR 125) and an injunction on him to abstain from such statements.

b) Relationship between nationality and 'racial 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 overlaps between nationality and race/ ethnic discrimination.²⁵⁵

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 provided benefits to those employees who are married. The PADA bans all discrimination based on family status.²⁵⁶ Family status covers marital status.

b) Benefits for employees with opposite-sex partners

In Bulgaria, it would constitute unlawful discrimination in national law if an employer only provided benefits to employees with opposite-sex partners.²⁵⁷

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

In Bulgaria, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive. There are no such exceptions for other grounds either.

However, according to the Healthy and Safe Working Conditions Act, employers have a duty to assign to their employees only tasks that are compatible with their capabilities,²⁵⁸ considering the specific dangers for employees with reduced work capacity.²⁵⁹ Furthermore, there are a number of laws and secondary legislation instruments governing specific fields, such as transport, including aviation, and other risk-intensive occupations, that provide for health requirements for access to employment in these fields. These norms providing for ability-based restrictions without any proportionality requirement are arguably in conflict with the PADA's prohibition of disability discrimination.

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

4.7.1 Direct discrimination

²⁵⁴ PADA, Article 4 (1).

²⁵⁵ 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. They have never been reviewed to reveal whether they might be indirectly discriminatory against racial groups.

²⁵⁶ PADA, Article 4 (1).

²⁵⁷ PADA, Article 4 (1) in conjunction with Article 6 (1).

²⁵⁸ HSWCA Article 16 (1.2a).

²⁵⁹ HSWCA Article 16 (1.3).

In Bulgaria, national law provides for specific exceptions for direct discrimination on the ground of age. According to the PADA, there are six exceptions for age altogether, three of which refer to other laws providing for age differentiation. The latter do not require proportionality – a (potential) issue.²⁶⁰ For the other three exceptions, the PADA requires proportionality.²⁶¹

The first exception for age discrimination under the PADA, which is not subject to proportionality, is for pension ages, including occupational pensions.²⁶² The second exception not subject to proportionality is for measures and programmes under the Employment Promotion Act.²⁶³ The latter include positive measures based on age. The third exception not subject to a proportionality test is the setting of a maximum age for eligibility for loans under the Students and Doctoral Students Loans Act.²⁶⁴

The exceptions which do provide for objective justification are for: setting requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment;²⁶⁵ setting 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;²⁶⁶ and setting requirements for minimum and maximum age for access to training or education.²⁶⁷ The latter exception may fall within the scope of Directive 2000/78/EC as it implicitly applies to vocational training.

In 2018, the SAC justified a university's rule setting a maximum age for access to recruitment for a teaching post (associate professor; *доцент*).²⁶⁸ The complainant who was not considered for the job on grounds of being older than required was turned down by the PADC and the Varna Administrative Court, whose decision was confirmed by the SAC. The courts failed to conduct a proportionality analysis, invoking instead the law conferring 'academic autonomy' on universities. The SAC's decision did not even mention the maximum age set by the university, which it justified, or the complainant's age. The SAC concluded that the complainant's treatment was not unfavourable because it was not personal; the rule would be the same for all people of his age.

a) Justification of direct discrimination on the ground of age

In Bulgaria, national law does not provide for justifications for direct discrimination on the ground of age.²⁶⁹

Since 2016, the SAC has consistently held, in a number of cases, that employees or civil servants 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 were not their age but their entitlement to a pension, and their entitlement to a pension was independent of age, as seniority was taken into account too.²⁷⁰ The SAC seems to regard taking seniority into account as quite different from taking age into account, ignoring the link between the two and not elaborating why. It has also ignored the fact that age *per se* is also a factor for pension entitlement under the law. The Supreme Court of Cassation (final instance in civil cases) (SCC) has produced similar case

²⁶⁰ PADA, Article 7 (1.8-9) and (1.12).

²⁶¹ PADA, Article 7 (1.5-6) and (1.11).

²⁶² PADA, Article 7 (1.8).

²⁶³ PADA, Article 7 (1.9).

²⁶⁴ PADA, Article 7 (1.12).

²⁶⁵ PADA, Article 7 (1.5).

²⁶⁶ PADA, Article 7 (1.6).

²⁶⁷ PADA, Article 7 (1.11).

²⁶⁸ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/ 2016.

²⁶⁹ PADA, Article 4 (2).

²⁷⁰ 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.

law. In 2018, the SAC continued this tendency in at least two cases,²⁷¹ as did the SCC.²⁷² None of these rulings discussed proportionality or any other manner of justification. In one of its 2018 rulings, the SCC invoked CJEU C-250/09 and C-268/09.

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/EC.²⁷³ Examples include: positive measures, including employment promotion measures; special protection for underage employees/workers; maximum age requirements for access to student loans; age and seniority pension requirements; minimum and maximum age requirements for access to education and training (proportionality test); minimum age, professional experience and seniority requirements for being hired or for certain work-related advantages (proportionality test); maximum age requirements for being hired due to training requirements for the job, or to the need for a reasonable period of employment prior to retirement (proportionality test).

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

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

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 people with caring responsibilities to ensure their protection. According to the Labour Code, employees under 18 are entitled to special protection and an employer may assist young employees.²⁷⁴ The minimum age for access to employment is 16 years.²⁷⁵ As an exception, 15-16-year-olds may be employed for light jobs that are not dangerous or harmful to them and do not hamper their regular schooling or vocational training.²⁷⁶ Such people 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.²⁷⁷ The employment of any such individual must be authorised by the authorities.²⁷⁸ Similar requirements are provided for 16-18-year-olds.²⁷⁹ Employees under 18 may not do work which is beyond their capabilities or harmful or involves risks that an underage person is assumed to be unable to understand or to avoid due to their immaturity.²⁸⁰ Employers are under a duty to take special care of employees under 18 by providing them with adapted conditions for work and vocational training.²⁸¹ 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.²⁸² Employees under 18 may not work more than 35 hours a week or seven hours a day, including vocational training time.²⁸³ Such

²⁷¹ For instance, SAC, Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017, Decision No. 4727 of 12 April 2018 in case No. 2769/ 2018.

²⁷² SCC, Ruling No. 368 of 18 May 2018 in case No. 483/ 2017, Ruling No. 401 of 28 May 2018 in case No. 188/ 2018.

²⁷³ PADA, Article 7 (1.5-6, 8-9, 11-12 and 14-15).

²⁷⁴ Labour Code, latest amendments, 6 November 2018, Article 294.6.

²⁷⁵ Labour Code, Article 301 (1).

²⁷⁶ Labour Code, Article 301 (2).

²⁷⁷ Labour Code, Article 302 (1).

²⁷⁸ Labour Code, Article 302 (2).

²⁷⁹ Labour Code, Article 303.

²⁸⁰ Labour Code, Article 304.

²⁸¹ Labour Code, Article 305 (1).

²⁸² Labour Code, Article 305 (2).

²⁸³ Labour Code, Article 305 (3).

employees are entitled to no fewer than 26 working days annual leave.²⁸⁴ These entitlements only apply to employees under 18.

Older workers are entitled to special protection too. In cases where workers are dismissed after having become entitled to a seniority and old age pension, regardless of the basis for their dismissal, they are entitled to compensation equivalent to the amount of two monthly salaries. If they have worked for the employer for the last ten years, the compensation is equivalent to the amount of six-monthly salaries.²⁸⁵ 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.

The compatibility with the Directive of domestic legislation allowing dismissal on grounds of retirement entitlement may be debatable. Under this legislation, a person may be dismissed solely on the ground of having effectively become a pensioner, without any (other) justification (proportionality) required in the individual case. On the other hand, a pensioner thus dismissed is not prevented from gaining employment elsewhere. In practice, many pensioners are employed. They do bear the insecurity implied since it is possible for their (new) employer to dismiss them at their discretion because they are pensioners. In Joined Cases C-250/09 and C-268/09, *Vasil Ivanov Georgiev v Tehnicheski universitet*, applicable *mutatis mutandis*, the Court reiterated that a legislation's (underlying) aim of intergenerational balance might be legitimate. Judicial interpretation would be required to establish whether this is, in fact, the aim pursued by this legislation.

In *Georgiev*, the Court further reiterated the relevance of the fact that the Bulgarian legislation is not based only on a specific age, but also takes account of the fact that the individuals concerned are entitled to financial compensation by way of a retirement pension. The Court concluded that the setting of an age limit for the termination of a contract of employment did not exceed what is necessary to achieve employment policy aims such as intergenerational balance, provided that that national legislation reflects those aims in a consistent and systematic manner (see also *Petersen*).²⁸⁶

While it is true that, in *Georgiev*, the relevant age was five years higher than the general retirement age, and the Court expressly noted that, it is also noteworthy that, in this case, compulsory retirement was at stake, whereas under the generally applicable legislation, employers have discretion to retain pensioners or not, i.e. there is always a possibility for a pensioner to keep their (precarious) employment indefinitely.

As held by the Court in *Georgiev*, interpretation by the national court would be required to ascertain whether such a legislative age limit genuinely reflects a concern to achieve the aims pursued in a consistent and systematic manner, i.e. whether the legislation is rational and constant. As the generally applicable legislation covers everyone, it does not seem to entail (selective) arbitrariness.

In *Georgiev*, the Court held that the Bulgarian legislation was clearly different from that examined in *Mangold*²⁸⁷ and appeared to be capable of being justified as the age in question (as of 2018, the generally applicable age is ca. 61 for women and ca. 64 for men) was higher than that in *Mangold* (which was 52), and because the legislation in *Mangold* took the age of the worker as the only criterion, whereas the Bulgarian legislation uses entitlement to retirement as its criterion.

To recapitulate, given the broad discretion which the Court recognises States have in choosing social and employment policy aims to pursue, and the means to pursue them,

²⁸⁴ Labour Code, Article 305 (4).

²⁸⁵ Labour Code, Article 222 (3).

²⁸⁶ *Petersen v Berufungsausschuss für Zahnärzte für Den Bezirk Westfalen-Lippe* (2010) C-341/08 ECJ.

²⁸⁷ *Mangold v Helm* (2005) C-144/04 ECJ; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62004CJ0144&from=EN>.

judicial interpretation might be required to establish whether this legislation is out of line with the Directive.

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

According to the Employment Promotion Act, an employer who creates a new job and hires a person no older than 29 years to do it is entitled to public money for reimbursement of that individual's salary for up to 18 months.²⁸⁸ An employer who creates a new intern position and hires a person no older than 29 years is entitled to public money for reimbursement of the intern's salary for up to nine months.²⁸⁹ If the intern has a basic level of education or lower and no qualifications, the reimbursement period may extend to 12 months.²⁹⁰ In all cases, recruits must be registered with the Employment Agency as job seekers. Furthermore, special conditions are provided for older workers. An employer who creates a new job and hires a person older than 55 years is entitled to public money for reimbursement of that individual's salary for up to a year.²⁹¹

According to the Employment Promotion Act, unemployed single parents (adoptive parents) and mothers (adoptive mothers) of children no older than five years receive support via incentives for employers. Employers who hire such individuals are entitled to state subsidies for their employment for up to a year.²⁹² Vocational training institutions are also entitled to state subsidies for providing such workers with training where it is organised by the employer and the Employment Agency.²⁹³

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. The PADA permits the setting 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.²⁹⁴ For example, an employer wishing to hire a manager would be entitled to require job applicants to have at least seven years of relevant professional experience. The employer would then be entitled to provide said manager with a company car (not provided to other staff). It further permits the setting 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.²⁹⁵

4.7.4 Retirement

a) State pension age

In Bulgaria, there is no generally applicable state pension age at which individuals must begin to collect their state pensions or must retire.

In Bulgaria, there is a generally applicable state pension age at which individuals *may* begin to collect their pensions. The ages at which individuals become entitled to receive an

²⁸⁸ Employment Encouragement Act, Article 36.

²⁸⁹ Employment Encouragement Act, Article 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).

²⁹⁰ Employment Encouragement Act, Article 41a.

²⁹¹ Employment Encouragement Act, Article 55a.

²⁹² Employment Encouragement Act, Article 53a (1).

²⁹³ Employment Encouragement Act, Article 53a (2).

²⁹⁴ PADA, Article 7 (1.5).

²⁹⁵ PADA, Article 7 (1.6).

old age pension are set by law.²⁹⁶ Age is not the only criterion for entitlement to such a pension. The number of years of service is taken into account too.²⁹⁷ The relevant pensionable ages are different for women and men.²⁹⁸ There are also differences for certain professions and occupations and for the civil service.²⁹⁹ In the general case, there is no need for an individual to defer receipt of their pension. They can continue their employment while collecting it. If an individual wish to work longer, the pension can be deferred but it does not need to 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. Workers, both women and men, become entitled to receipt of occupational pensions at the age of 60.³⁰⁰ As an exception, they can start collecting their occupational pensions five years earlier, provided that this is set in a collective agreement.³⁰¹ If an individual wishes to work longer, payments from such occupational pension schemes can be deferred, but this is unnecessary. An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

In Bulgaria, there are state-imposed mandatory retirement ages, but these are *not* generally applicable. In certain sectors only, such as the professional army³⁰² and the police,³⁰³ the relevant special laws impose age limits after which both women and men can no longer serve. However, there is no bar to them finding other employment and still collecting their pension.

In addition, under the Labour Code, an individual is subject to dismissal, at the employer's discretion, when they acquire the right to an old age pension.³⁰⁴ This means that, even if people are not required by law to stop working upon becoming entitled to a pension, they are not protected against losing their job on grounds of becoming entitled to a pension. Nevertheless, following such a dismissal, an individual may take up other employment.

Professors, assistant professors and doctors of science (holders of PhDs) are subject to dismissal, at the employer's discretion, when they reach 65 years.³⁰⁵ They still, nominally, retain employment rights, but effectively have no protection against dismissal on age grounds. In CJEU Case *C-250/09 Georgiev*, the Bulgarian Government submitted that this national legislation pursued a social policy aim linked to the training and employment of teaching staff and to the application of a specific labour market policy which takes account of the specific situation of the staff in the discipline concerned, the needs of the university establishment under consideration and the professional abilities of the person covered. The

Under a new provision, age is not a factor for a specific category of public officials. Under Article 69g of the Social Security Code (adopted in 2018, in force as of 1 January 2019, after the cut-off date for this report), judges, prosecutors and investigators who as of 31 December 2018 have at least 35 years of legal service, of which at least two thirds were in the judiciary, may claim a pension regardless of their age.

²⁹⁷ Bulgaria, Social Security Code (*Кодекс за социално осигуряване*), latest amendments 18 December 2018, Article 68.

²⁹⁸ 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. An individual also needs a certain number of years of work experience during which they made social security payments.

²⁹⁹ Social Security Code, Article 69-69g.

³⁰⁰ Social Security Code, Article 243 (4).

³⁰¹ Social Security Code, Article 243 (6).

³⁰² Bulgaria, Defence and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*), in force as of 12 May 2009, latest amendments 28 May 2019, 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.

³⁰³ Ministry of Interior Act, Article 226 (1). The limit is 60 years.

³⁰⁴ Labour Code, Article 328.10.

³⁰⁵ Labour Code, Article 328.10.

CJEU considered that this statement did not amount to clearly specifying the aim but concluded that the stated aim may be consonant with the intention of allocating professorial posts in the best possible way between the generations, in particular by appointing young professors. In this sense, the CJEU reasoned, encouragement of recruitment in higher education by means of the offer of posts as professors to younger people may constitute a legitimate aim.

There is an exception for professors, assistant professors and doctors of science (holders of PhDs) for whom the respective academic council has decided to extend their labour contracts for a further year (but no more than three consecutive years for professors and no more than two consecutive years for assistant professors).³⁰⁶

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 her/his right to claim such a pension.³⁰⁷ In other words, employers can freely dismiss people whom they hired as pensioners. It is possible for the employer to dismiss: a) an employee who opted to receive a reduced pension a year earlier than the statutory age upon acquiring the requisite number of years of service; and b) such an employee who the employer hired after s/he had opted for a reduced pension.³⁰⁸

Regarding the compatibility with the Directive of the legislation allowing dismissals on grounds of retirement entitlement, please see in detail Section 4.7.2 above.

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 armed forces.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do generally apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age. After becoming a pensioner, an employee may choose whether to leave employment. Protection against dismissal and other employment rights apply to employees who choose to stay irrespective of age. This applies to all employees, apart from those in the armed forces and police and some in academia.

However, under the Labour Code, when an individual acquires the right to an old age pension, they are subject to dismissal, at the employer's discretion, on that specific ground – having becoming entitled to a pension.³⁰⁹ That is to say, employers may not dismiss pensioners on other (unlawful) grounds, but may do so on this ground. Employers may also dismiss a worker who was hired after s/he became entitled to an old age pension and exercised her/his right to claim such a pension.³¹⁰ In other words, employers can freely dismiss people whom they hired as pensioners. It is also possible for the employer to dismiss: a) an employee who opted to receive a reduced pension a year earlier than the statutory age upon acquiring the requisite number of years of service; and b) such an employee who the employer hired after s/he had opted for a reduced pension.³¹¹

³⁰⁶ Labour Code, Article 328.10.

³⁰⁷ Labour Code, Article 328.10b.

³⁰⁸ Labour Code, Article 328.10a and 328.c.

³⁰⁹ Labour Code, Article 328.10.

³¹⁰ Labour Code, Article 328.10b.

³¹¹ Labour Code, Article 328.10a and 328.c.

Similarly, civil servants are subject to dismissal on grounds of having become entitled to a pension. In 2018, the courts have continued to rule that this does not amount to age discrimination.

f) Compliance of national law with CJEU case law

In Bulgaria, national legislation is, arguably, in line with CJEU case law on age regarding mandatory retirement, in the light of the broad discretion enjoyed by Member States in their choice not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it. While under the PADA three age exceptions do not provide for a proportionality test, which is a compliance issue *per se*, only two age-based provisions are thereby exempted and those do not appear unreasonable or disproportionate. Under the Labour Code, these two provisions govern the dismissal of certain categories of university staff once they reach 65 years (the CJEU concluded that this measure could not be regarded as unduly prejudicial and was, therefore, justifiable (Case C-250/09 *Georgiev*)); and the dismissal of pensioners who were hired after becoming pensioners. While judicial interpretation is required concerning the proportionality of the latter provision, arguably, they are in line with CJEU case law as, in all cases, the people concerned can seek alternative employment.

Furthermore, the special laws governing the police and armed forces provide for mandatory retirement of officers at specified ages. In those cases, retirees are free to engage in other employment while collecting their pensions.

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 lower qualifications and poorer work performance.³¹² However, this has limited significance as once an employee becomes entitled to an old age pension, this in itself is a legal basis for an employer to dismiss them, even if there is no redundancy.³¹³ It is the same for people who opted to receive a reduced pension one year earlier than pensionable age upon reaching the requisite number of years of service.³¹⁴ In the case of professors, associate professors and doctors of science (holders of PhDs), 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).³¹⁵

b) Age taken into account for redundancy compensation

In Bulgaria, national law provides for compensation for redundancy. Such compensation 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 equivalent to the amount of two monthly salaries.³¹⁶ This is preferential treatment compared to workers who are made redundant prior to becoming entitled to a pension – they are entitled to no more than one salary in compensation.³¹⁷ If workers dismissed after having become entitled to retire have worked with the employer for the last ten years, their compensation is equivalent to the amount of six monthly salaries.

³¹² Labour Code, Article 329 (1).

³¹³ Labour Code, Article 328.10.

³¹⁴ Labour Code, Article 328.10a.

³¹⁵ Labour Code, Article 328.10.

³¹⁶ Labour Code, Article 222 (3).

³¹⁷ Labour Code, Article 222 (1).

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. The 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.³¹⁸

³¹⁸ 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 is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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

- different treatment of people with disabilities in training or education aimed at equalising their opportunities;³¹⁹
- special measures for the benefit of disadvantaged people or groups aimed at equalising their opportunities, as far as and as long as such measures are necessary;³²⁰
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and people with disabilities;³²¹
- measures aimed at protecting the distinctive identity of people 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;³²²
- measures in training or education aimed at guaranteeing the participation of people belonging to ethnic minorities, as far as and as long as such measures are necessary.³²³

The PADA places a general duty on all authorities to take measures to equalise opportunities for disadvantaged groups,³²⁴ as well as to guarantee participation by ethnic minorities in education, whenever necessary to accomplish the objectives of equality law.³²⁵ The PADA requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.³²⁶ However, no such measures are on record.

There are a number of positive policy measures in place for the benefit of ethnic groups, in particular, Roma. The case law has been ambivalent with respect to them. In 2018, Sofia City Administrative Court (SCAC) repealed a decision by the PADC, which had upheld positive measures for Roma students.³²⁷ The PADC had found the Minister of Education not liable for ethnic discrimination on grounds of having provided for scholarships exclusively for Roma school students. The complainant association had alleged that non-Roma students were discriminated against as the impugned scholarships were only available to Roma students. The grants were provided under a targeted project aimed at preventing school dropout by Roma students.

SCAC considered the measure to be directly discriminatory against non-Roma people. SCAC compared the impugned scholarships to generally available scholarships for academic achievement and noted that the latter were only awarded to excellent or very good students, while Roma scholarships were not dependent on a high-achieving academic record, a minimum achievement being sufficient. In addition, for the purposes of general

³¹⁹ PADA, Article 7 (1.10).

³²⁰ PADA, Article 7 (1.14).

³²¹ PADA, Article 7 (1.15).

³²² PADA, Article 7 (1.16).

³²³ PADA, Article 7 (1.17). The law does not specify the measures allowed. Any measure falling into this category is accepted.

³²⁴ There are no examples where measures have been taken to equalise opportunities for LGBT individuals, among other vulnerable groups.

³²⁵ PADA, Article 11 (1).

³²⁶ PADA, Article 11 (2).

³²⁷ SCAC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

scholarships for high academic achievement, very good students were required to demonstrate socio-economic need in order to become recipients, whereas Roma scholarship recipients were not required to show economic hardship. Moreover, the amounts awarded with the general academic achievement scholarships, even for the best students, were several times lower than the levels of Roma scholarships awarded even to the poorest achievers. The court concluded that students should indeed be encouraged to continue their studies but not on the basis of ethnicity. Ethnic-based scholarships were not the only means to the legitimate aim pursued and they disproportionately disadvantaged non-Roma students. Lack of funds was not the only reason for Roma school dropout (there was also a lack of motivation) and there were also indigent non-Roma students; Roma students should be encouraged to make more of an academic effort before being awarded financial stimuli.

This judgment could not be considered to be in line with Directive 2000/43/EC, as it overlooks the fact of disproportionate Roma exclusion and marginalisation in schooling, among other relevant facts, such as overwhelming Roma poverty and social disadvantage, not comparable to the economic and educational opportunities generally enjoyed by majority families and children. In particular, the SCAC's decision does not take into consideration Article 5 of Directive 2000/43/EC, which clarifies that the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. In contravention of Article 5 of the Directive, the SCAC used the principle of equal treatment as a reason to invalidate positive action. The SCAC did not, in its reasoning, refer to the limitations to positive action drawn up by the CJEU in its judgment in Case C-193/17 of 22 January 2019 (the Cresco judgment).

The SCAC's decision was appealed against by the Centre for Educational Integration of Ethnic Minority Children and Students and by the Protection Against Discrimination Commission (PADC). The case is now pending before the Supreme Administrative Court (SAC) (case No. 5375/ 2019). The first hearing is scheduled for 18 December 2019.

This is, as yet, an isolated case, no similar legal attacks on positive action being on record.

In 2018, the SAC, in the case of the dismissal of a civil servant along the lines of Case C-406/ 2015 *Petya Milkova*, interpreted the Labour Code system of advance protection against dismissal of employees with disabilities (prior authorisation by the Labour Inspectorate in cases of recognised illnesses included in a list provided for under secondary legislation) as a positive measure to compensate for inequality, which should benefit the entire vulnerable category of people with disabilities.³²⁸ The SAC held that the complainant in the case should benefit from such advance protection, regardless of the Civil Servant Act, which provides for no such entitlement for civil servants. The SAC held that the complainant, who had not benefitted from such protection, was therefore unlawfully dismissed.

b) Quotas in employment for people with disabilities

In Bulgaria, national law provides for quotas for people with disabilities in employment. According to the Labour Code, employers with more than 50 employees are under a duty to annually set aside 4-10 % of their jobs to accommodate people with disabilities, *inter alia*.³²⁹ 'Accommodating' here means transferring employees who have become disabled while in employment to new jobs suitable for their altered or reduced working capacity.

According to the Integration of People with Disabilities Act (IPDA), at least half of those positions must be reserved for people with long-term disabilities.³³⁰ According to the IPDA,

³²⁸ SAC, Decision No. 4151 of 30 March 2018 in case No. 494/ 2015.

³²⁹ Labour Code, Article 315 (1).

³³⁰ IPDA, Article 27 (1).

an employer has a duty to advertise any vacant posts adapted for people with long-term disabilities with the labour bureau.³³¹ Accordingly, these jobs may be taken by people outside the employer's organisation, including people who were not previously employed.

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 position. The Labour Code stipulates that an employer who fails to discharge a duty under the Code is liable to a fine of between EUR 750 and 7 500 (BGN 1 500 and 15 000) (Article 414 (1)). This is a general provision on sanctions and is not specific to non-implementation of quotas. In the case of quotas not being implemented, a fine would be imposed on the employer for the overall situation, not per unfilled quota place. If, upon a subsequent inspection, the employer is found still not to have complied, a fine for a repeat violation would be imposed on them – a higher amount (between BGN 20 000 and BGN 30 000 (EUR 10 000-15 000)) (Article 414 (2) Labour Code).

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 statistics from the Agency for People with Disabilities, in 2016 (no data are available for 2017-2018), 32 859 positions were set aside; 18 756 of them for people with permanent disabilities; 11 083 posts were actually occupied by people with disabilities and 11 829 by people with permanent disabilities; 5 381 positions set aside were advertised as vacant.³³² These data are incomplete and unreliable because, as the Agency explicitly recognises in its 2016 report, 65 out of 98 regional labour bureaux supplied data; possibly not all employers informed their bureau (2 346 did); there are no data on the number of employers who were subject to this duty; and the numbers stated for occupied and vacant posts don't seem to match up with the overall number of accommodated positions. 'Accommodated' here means made suitable for persons with reduced or altered working capacity.

Disability quotas are also provided for under the Civil Servant Act.³³³ Authorities with more than 50 staff are bound to designate at least 2 % of all positions for people with long-term disabilities.³³⁴ Authorities with between 26 and 50 staff must designate at least one position.³³⁵ Candidates for these positions compete only with other people with disabilities.³³⁶ 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.³³⁷

The People with Disabilities Act (PDA), adopted in 2018 (but in force as of 1 January 2019, after the cut-off date for this report), introduces employment quotas for people with long-term disabilities. Employers with 50 to 99 employees must hire at least one person with a long-term disability, while employers with 100 or more employees must hire at least two people with long-term disabilities per 100 members of staff (Article 38 (1)). Accommodated posts set aside under the Labour Code (existing quota duties) are not taken into consideration for purposes of compliance with the new PDA duties (Article 38 (2) PDA). Accommodated posts will be reserved for existing employees (who might become disabled). The PDA quota requires new employees to be hired. In case of non-compliance, employers are subject to fines (the maximum amount is BGN 5 000 (EUR 2 500), doubled in cases of repeat violations). Alternatively, a non-complying employer would pay monthly

³³¹ IPDA, Article 27 (2).

³³² Available at: <http://ahu.mlsp.government.bg/portal/document/51085> (in BG).

³³³ Civil Servant Act, Article 9a.

³³⁴ Civil Servant Act, Article 9a (1.1).

³³⁵ Civil Servant Act, Article 9a (1.2).

³³⁶ Civil Servant Act, Article 9a (1.2).

³³⁷ Civil Servant Act, Article 9a (1.3).

compensation for every unfilled quota place (payments would contribute to the state budget). A monthly payment would be equivalent to 30 % of the minimum wage (in 2019, BGN 168 (EUR 84)). This means that an employer may avoid (the risk of) being fined by opting to pay monthly compensation.

The new PDA duty does not concern public authorities employing civil servants, only private employers. Therefore, it does not affect existing quota duties under the Civil Servants Act.

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 proceedings before the general (civil) courts;³³⁸
- judicial proceedings before the administrative courts for public sector respondents (under case law);³³⁹
- specialised quasi-judicial proceedings before the PADC, the independent equality body, with judicial review by two instances of administrative courts.³⁴⁰ This is complemented by a follow-up procedure for damages before the courts (administrative courts for public-law respondents and civil courts for others).³⁴¹

A victim can choose between the judicial and PADC remedies. The courts can make a declaration of discrimination and award compensation for damages, as well as order the 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, order preventive or remedial action and impose financial sanctions.³⁴² It cannot award compensation.

Under the PADA, the provisions on the judicial remedy before the general courts expressly indicate as competent the civil courts, whoever the respondent, public or private. However, where the respondent is a public authority, the case law has moved towards recognising as competent not the civil courts, but the administrative ones. The PADC remedy is universally applicable, regardless of the respondent. Both remedies are binding.

While under the Labour Code, the Chief Labour Inspectorate (CLI) is competent to exercise overall oversight of compliance with the Labour Code and to impose sanctions, this procedure is not relevant for purposes of discrimination protection. The CLI has no (known) practice of enforcing the Labour Code's prohibition of discrimination.

Under the Criminal Code, similarly, provisions on discriminatory criminal acts, such as incitement to discrimination, hate-based violence or vandalism, mobbing or interference in religious practice, lack enforcement due to unwillingness by the Prosecutor's Office to protect minorities attacked by individuals belonging to the majority.

b) Barriers and other deterrents faced by litigants seeking redress

According to the PADA, both the judicial and the PADC procedures are exempt from costs, both state fees and expenses.³⁴³ However, the 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 the PADC demands to be awarded costs when complainants appeal against its decisions

³³⁸ PADA, Article 71.

³³⁹ For instance, SAC, Ruling No. 10400 of 3 August 2018 in case No. 12325/ 2017.

³⁴⁰ PADA, Articles 47, 50, and 68 (1).

³⁴¹ PADA, Article 74.

³⁴² The maximum sanction which may be imposed on an individual for an act of discrimination is the equivalent of EUR 1 000. For legal persons this is EUR 1 250. 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 5 000. 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 10000.

³⁴³ PADA, Article 53 and Article 75 (2).

before the administrative court.³⁴⁴ Where complainants are unsuccessful, the court orders them to pay the PADC staff attorneys' fees. The reason that the courts ignore the PADA's exemption of litigants from costs is that, under this legislative rule, costs should be recuperated from courts' budgets.

Litigants are free to represent themselves in both judicial and PADC procedures.³⁴⁵ Before the Supreme Court of Cassation a complaint only needs to be signed by a lawyer³⁴⁶ and 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 informal and accessible, complainants are not as dependent on a lawyer. On the other hand, the PADC is located in the capital city, which poses a geographical barrier.

Because of case law shifting away from PADA provisions as regards the competence of civil courts in discrimination cases against public authorities, cases which were heard by a civil court have on appeal been 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.³⁴⁷ This breaches litigants' rights to proceedings of a reasonable length.

While the 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 the PADC has 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 claims against public bodies. After years of judicial competence disputes between the civil and administrative courts, 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 had taken place prior to the filing of a claim with the court.³⁴⁸

However, in 2017, in at least three cases, the Supreme Administrative Court 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 the PADC and secured a discrimination finding by it, whereas the civil courts were competent in all other cases.³⁴⁹ In those three cases, the SAC declared lower court decisions inadmissible and years of litigation were wasted for the claimants. In 2018, the SAC went back to ruling that administrative courts were competent in all cases against public bodies, including where there had been no PADC proceedings preceding a claim.³⁵⁰ 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 and civil – uses perceived ambiguities in the applicable legal provisions to avoid part of the caseload associated with litigation under the PADA.³⁵¹

³⁴⁴ The PADC bases this practice on an interpretative ruling (*тълкувателно решение*) by the Supreme Administrative Court – No. 3 of 13 May 2010, rendered in commercial case No. 5 of 2009 (see PADC letter No. 44-00-1609 of 20 April 2015). This ruling is of general application and not specific to cases under the PADA. Its application to PADA cases contradicts the PADA, Article 75 (2).

³⁴⁵ 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) and the law does not require them to be represented at hearings.

³⁴⁶ Bulgaria, Civil Procedure Code (*Граждански процесуален кодекс*), Article 284 (2).

³⁴⁷ For instance, SAC, Ruling No. 10400 of 3 August 2018 in case No. 12325/ 2017.

³⁴⁸ Interpretative Decree 2/2014 of 19 May 2015.

³⁴⁹ SAC, 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.

³⁵⁰ For instance, SAC, Ruling No. 10400 of 3 August 2018 in case No. 12325/ 2017.

³⁵¹ On 16 January 2019, after the cut-off date for this report, the Supreme Court of Cassation and the Supreme Administrative Court rendered a joint interpretative ruling to the effect that, in all cases where no prior proceedings before the equality body, the Protection Against Discrimination Commission, had been carried out, all discrimination claims are to be heard by the civil courts, as opposed to the administrative courts.

The time limit for the civil court remedy is the general one for civil cases – five years. For the PADC remedy it is three years. There is no limit on the amounts of compensation the courts can award. The maximum amounts of sanctions imposable by the PADC are provided for under the PADA and appear reasonable, even if their effectiveness as a deterrent in practice is unknown. Also unknown is the rate of implementation of PADC decisions imposing fines.

While minority groups, most notably the Roma, but also LGBT people and others, often face a hostile public environment in terms of hate speech and general prejudice, litigation taken by Roma, LGBT people and other minority individuals and groups is not rare. On the contrary, minorities do actively use the PADA as a tool against hate speech, in particular; Roma and LGBT activists are among the most dynamic in this respect. On the other hand, there are no studies to show how much *more* actively minorities would use the PADA were it not for hate speech, or whether, in a more tolerant environment, their litigation focus would shift to other discrimination claims, such as employment disadvantage, school segregation, arbitrary housing decisions and a plethora of other pressing issues.

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, these statistics are not comprehensive, adequately disaggregated, harmonised or updated and may feature unclear overlaps, as well as gaps. Statistics are available for Sofia City Administrative Court (SCAC), hearing PADC-decided cases on appeal as a first instance, as well as discrimination claims against public bodies. In 2017, 114 such cases were filed with SCAC (out of 3 692 cases in total pending in the relevant chamber of the court, the one dealing, inter alia, with PADA cases).³⁵² No statistics are available for the number of such cases decided. There are no data for 2018.

There are no statistics for the Supreme Administrative Court hearing PADC cases on judicial review as a final instance.³⁵³ There are no statistics for the administrative courts hearing discrimination cases as a first instance (damage claims against public bodies).

According to Supreme Judicial Council statistics for the district (first-instance) civil courts, in 2018, 91 cases under the PADA were initiated.³⁵⁴ As of 2018, 217 previously initiated PADA cases were pending with the district courts, in addition to the 91 newly brought cases.³⁵⁵ Altogether, 308 new and previous cases under the PADA were pending with the district courts in 2018.³⁵⁶ In 2018, the district courts decided 60 PADA cases.³⁵⁷ In one of these cases, the claim was fully upheld; in three cases, the claim was partially upheld; in eight cases, the claim was dismissed.³⁵⁸ Forty-eight cases were terminated (on admissibility grounds).³⁵⁹

³⁵² See Report on the activities of Sofia City Administrative Court in 2017 (*Доклад за дейността на Административен съд София-град през 2017 г.*): www.admincourtsofia.bg/LinkClick.aspx?fileticket=C7n3wIowC1A%3d&tabid=252.

³⁵³ Telephone interview with the Court's Head Statistician, 23 April 2015. Supreme Administrative Court, Activity Report 2017, available at: [www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/\\$FILE/%D0%94%D0%9E%D0%9A%D0%9B%D0%90%D0%94%202017.pdf](http://www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/$FILE/%D0%94%D0%9E%D0%9A%D0%9B%D0%90%D0%94%202017.pdf).

³⁵⁴ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

³⁵⁵ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

³⁵⁶ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

³⁵⁷ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

³⁵⁸ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

³⁵⁹ Supreme Judicial Council (2019) Aggregated Statistical Tables on the Courts' Activities for 2018, available at: www.vss.justice.bg/root/f/upload/22/Statistika-2018-sait.pdf.

According to Supreme Court of Cassation statistics, in 2016, seven discrimination cases were brought with that court and in 2017, five cases were brought.³⁶⁰ There are no data yet for 2018.

The PADC produces statistics concerning its own caseload, as part of its annual report addressed to Parliament, but these reports are only available later in the year. Although there is no such requirement under the law, the PADC only publishes its annual reports on its website after Parliament approves them. Parliament can, in practice, delay this indefinitely. This happened in 2012-2014. The 2017 PADC report has been published,³⁶¹ as has the one for 2018.³⁶² The PADC statistics are only partially, and not exhaustively, ground-, and field-disaggregated. Disaggregation is carried out by the PADC panel dealing with a set of protected grounds (not one protected ground). The PADC panels report on their docket not following a standardised, exhaustive template. In some instances, case numbers pertaining to individual grounds are reported, in others this is not the case. For the purposes of its records, the PADC treats 'exercise of labour rights' not as a field, but as a protected ground, thwarting adequate field disaggregation. In 2018, the PADC received 600 complaints and *actio popularis* motions, and instituted 721 proceedings.³⁶³ The PADC initiated ex officio proceedings on 386 occasions (mostly to do with architectural inaccessibility) and rendered 511 decisions altogether.³⁶⁴

d) Registration of discrimination cases by national courts

In Bulgaria, discrimination cases are registered as such by (certain) national courts. However, the 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, associations, 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.³⁶⁵ Before the civil courts, trade unions and legal persons operating for non-profit purposes registered in the public interest may represent victims.³⁶⁶ Legal persons operating for non-profit purposes are foundations or associations.³⁶⁷ Those which self-identify as acting in the public interest register with the Ministry of Justice.³⁶⁸ They are subject to stricter requirements.³⁶⁹ Arguably, a non-profit organisation which is not

³⁶⁰ Supreme Court of Cassation (2018), Statistical Data for 2017, available at: www.vks.bg/Docs/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4_%D0%BF%D1%80%D0%B8%D0%BB%D0%B0%D0%B3%D0%B0%D0%BD%D0%B5_%D0%97%D0%94%D0%A1_2017_pr2.pdf, page 26.

³⁶¹ Available at (in BG): www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2_2017.pdf.

³⁶² Available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

³⁶³ PADC (2018) *Годишен отчет за 2018 г.* (Annual Report 2018), p. 7, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

³⁶⁴ PADC (2018) *Годишен отчет за 2018 г.* (Annual Report 2018), p. 7, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

³⁶⁵ Bulgaria, Administrative Procedure Code (*Административнопроцесуален кодекс*), latest amendments 18 November 2018, Article 18 (2).

³⁶⁶ PADA, Article 71 (2).

³⁶⁷ Bulgaria. Legal Persons for Non-profit Purposes Act (*Закон за юридическите лица с нестопанска цел*), latest amendments 27 November 2018, Article 1 (2).

³⁶⁸ Legal Persons for Non-profit Purposes Act, Article 2 (1 and 3).

³⁶⁹ Legal Persons for Non-profit Purposes Act, Chapter Three.

registered under national legislation as being 'in the public interest' can still claim standing before the courts, by substantiating that, in fact, its activities are in the public interest.³⁷⁰

There is no legal duty for NGOs or trade unions to act. It is, however, a common practice for NGOs (not for trade unions) to represent victims of discrimination (although not directly). Usually, NGOs provide lawyers to represent claimants or take court action on their own (the NGO's) behalf (*actio popularis*). Rarely, they also put forward the NGO itself (as opposed to an individual lawyer) as a representative for a claimant. In such cases, a lawyer would represent the NGO which represents a victim.

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Bulgaria, associations, foundations and trade unions are entitled to act in support of victims of discrimination. Before the civil courts, trade unions and legal persons operating for non-profit purposes in the public interest may enter cases brought by victims in an 'interested party' capacity.³⁷¹ There is no legal duty for NGOs or trade unions to do this. There is no formal possibility under the law for NGOs or trade unions to join cases before the PADC.

Generally, NGOs do not use their 'interested party' standing to support claimants before the courts.

c) Actio popularis

In Bulgaria, national law allows associations, foundations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). According to the PADA, any entity can bring proceedings before the PADC without identifying a specific victim.³⁷² No special requirements apply; incorporation is enough. However, under settled Supreme Administrative Court case law, including in 2018, public interest law litigants expressly have no standing to appeal against PADC decisions, as such litigants are said to lack 'a legal interest', not being personally affected by a PADC decision.³⁷³ This 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 unfavourable PADC decisions. This is a serious hindrance for public interest litigation. Before the PADC, *actio popularis* litigants may seek the same remedies as victims.

Before the civil courts, trade unions and public interest non-profit organisations can take *actio popularis* action, 'where the rights of many parties are infringed' (Article 71 (3) PADA). Entity incorporation is required. Non-profit organisations 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 people. There is no legal definition of 'many'. In the past, in one case, judges accepted as few as 10 as enough. In another case, they frustrated implementation of the legal provision, requiring that victims be enumerated, and each individual listed by name. Trade unions and non-profit organisations can explicitly (only) seek a declaration of discrimination and a court order for the respondent to stop and abstain from the impugned conduct. The listing is exhaustive. A claim for damages is clearly, if implicitly, excluded. No special rules apply concerning the shifting of the burden of proof.

³⁷⁰ Legal Persons for Non-profit Purposes Act, Article 38 (1), specifies which activities qualify as public interest ones.

³⁷¹ PADA, Article 71 (2).

³⁷² PADA, Article 50.3.

³⁷³ For instance, SAC, Decision No. 7863 of 12 June 2018 in case No. 697/2017, Ruling No. 6491 of 17 May 2018 in case No. 5486/2018.

In 2018, the courts and the PADC decided a number of public interest cases brought by activists and NGOs, some of whom belonged to the relevant victim category (sharing its legal interest) (Roma, people with certain illnesses, minority believers)³⁷⁴ and some of whom did not.³⁷⁵ In a PADC case brought by a minority denomination on behalf of all of its members and followers against hate speech broadcasts targeting them, the SAC expressly held that the claimant entity had standing to seek such protection.³⁷⁶

d) Class action

In Bulgaria, national law allows associations, foundations 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, organisations which exist for the protection of a particular category of victims or for the protection of people from a particular type of violation have standing to bring 'collective claims' in court.³⁷⁷ Such claims can be brought on behalf of *all* victims of a single violation where their 'circle cannot be exactly defined but is definable'.³⁷⁸ Litigant entities would need to prove incorporation and the fact that they exist '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.³⁷⁹ Entities would need to clarify 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 stop the violation and/or to correct its consequences for the collective interest, and to pay compensation.³⁸⁰

In terms of whether this remedy belongs to an opt-in or an opt-out model, it should be noted that, under the law, the relevant persons/ entities have standing to bring action on behalf of all victims of the alleged violation, which would indicate an opt-out model. Indeed, under the law, victims may opt out within a certain time limit, which the court confirms (Article 383 (1.2)). Those persons are then free to pursue their right in a separate trial. On the other hand, there is also a procedure for including additional victims or organisations, also by express ruling of the court; this amounts to an opt-in procedure (Article 383 (1.1)). The decision in the case explicitly has effect vis-à-vis the persons who brought the claim, as well as those persons who claim to be victims and who did not opt out (Article 386 (1)). Where the decision upholds the claim, persons who opted out can also avail themselves of that decision (*ibid.*). The law does govern the relationship between the claimants and the victims in terms of payment of damages (Article 387).

No special rules on shifting the burden of proof apply to general collective claims. General provisions on collective claims implicitly apply to discrimination cases too. In such cases, the rule on shifting the burden of proof under the PADA should arguably apply. In practice, however, this has not been tested in the courts.

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. The PADA requires this in all anti-discrimination proceedings, implicitly for

³⁷⁴ For instance, Burgas Administrative Court, Decision No. 564 of 23 March 2018 in case No. 1786/ 2017; PADC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017; Supreme Administrative Court, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016; PADC, Decision No. 183 of 3 May 2018 in case No. 287/ 2016; Supreme Administrative Court, Decision No. 7863 of 12 June 2018 in case No. 697/ 2017; Supreme Administrative Court, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

³⁷⁵ For instance, Sofia City Administrative Court, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018.

³⁷⁶ SAC, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

³⁷⁷ Civil Procedure Code, Article 379.

³⁷⁸ Civil Procedure Code, Article 379 (1).

³⁷⁹ Civil Procedure Code, Article 380 (3).

³⁸⁰ Civil Procedure Code, Article 379 (2-3).

any form of discrimination, where the claimant produces (presents) facts from which an *inference* that discrimination is present can be made.³⁸¹

Implementation of the rule on shifting the burden of proof is rudimentary. While judges and the PADC now regularly invoke the shifting the burden of proof rule, this is usually more declaratory than practical, and they appear still to lack meaningful comprehension of the rule. There has been no training on it for judges. Only one case (sex discrimination) is on record where the ruling hinged on shifting the burden of proof. The Supreme Administrative Court (SAC) found that sex was the reason for the less favourable treatment on grounds that the respondent failed to establish a legitimate reason.³⁸²

In 2018, the SAC invoked the rule on shifting the burden of proof to hold that the claimant, in an architectural inaccessibility case, did not have the burden of proving the non-pecuniary damages he incurred as a result of the established inaccessibility of the urban environment; those damages were presumed and the respondent bore the burden of refuting them.³⁸³ For the rule on shifting the burden of proof, the court relied on Article 14 ECHR (in abstract) rather than the directives. The SAC held in one more recent disability rights case that an act of discrimination by presumption resulted in non-pecuniary damages, relying on Article 14 ECHR and the PADA.³⁸⁴

In another 2018 decision, the SAC held that, under the rule on shifting the burden of proof, a claimant needed to establish facts relative to all of the elements of (direct) discrimination, including the protected ground and the causal link between that ground and the impugned treatment.³⁸⁵ In yet another 2018 decision, in a Roma forced eviction case, the SAC held that shifting the burden of proof was not applicable even though discrimination was alleged, as the proceedings were not based on the PADA but on the Territory Planning Act (judicial review of administrative eviction orders).³⁸⁶

In 2017, the SAC ruled in one case that, '[since] it was not established beyond reasonable doubt that there were conduct and circumstances from which to make a conclusion of unequal treatment beyond any reasonable doubt [...] 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'.³⁸⁷

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Bulgaria, there are legal measures of protection against victimisation. The PADA expressly prohibits victimisation as a form of discrimination.³⁸⁸ Victimisation is defined as: a) less favourable treatment of a person who has taken, is presumed to have taken or will presumably take any action for protection against discrimination; b) less favourable treatment of a person where a person associated with them has taken, is presumed to have taken, or will presumably take any action for protection against discrimination; c) less favourable treatment of a person who refused to discriminate.³⁸⁹ 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.³⁹⁰

³⁸¹ PADA, Article 9.

³⁸² SAC, Decision No. 274 of 09 January 2012 in case No. 1319/2011.

³⁸³ SAC, Decision No. 356 of 10 January 2018 in case No. 8993/2016.

³⁸⁴ SAC, Decision No. 363 of 10 January 2018 in case No. 9234/2016.

³⁸⁵ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/2016.

³⁸⁶ SAC, Decision No. 14889 of 4 December 2018 in case No. 7354/2018.

³⁸⁷ SAC, Decision No. 1374 of 2 February 2017 in case No. 6496/ 2016.

³⁸⁸ PADA, Article 5.

³⁸⁹ PADA, Additional Provision § 1.3.

³⁹⁰ PADA, Additional Provision § 1.3.

Therefore, any person who assists 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

The PADC can impose financial sanctions of between BGN 250 and 2 500 (EUR 125 and 1 250), amounts that would arguably be dissuasive to the majority of individuals and small enterprises.³⁹¹ While medium-sized and large businesses might not be deterred by these amounts, the bad publicity arguably motivates them to actively engage in proceedings and in settlements where complainants are open to the latter. PADC fines are not awarded to the victim as compensation but go to the PADC budget.³⁹² Where a breach is repeated, the sanction is doubled.³⁹³ These sanctions are uniformly applicable to all sectors and fields, including the private and public sectors, as well as fields outside employment. The PADC can, furthermore, order particular remedial action by discriminators and suspend the execution of employers' decisions where those may result in discrimination.³⁹⁴ The civil courts do not impose fines. They award compensation for damages (Article 71 (1.3) PADA). They may also issue injunctions.

In 2018, the PADC, in a hate speech case brought against a media company and its executive officer, imposed the following sanctions, including structural remedies: a fine of the maximum amount (BGN 2 000 (EUR 1 000)), an injunction to abstain from publishing any articles similar to the impugned one and an injunction to introduce internal prevention mechanisms to filter discriminatory material.³⁹⁵ In deciding on these sanctions, in particular the maximum fine, the PADC expressly took into account the fact that, in 2010, it had twice found the same company liable for similar violations.

b) Ceiling and amount of compensation

There is no maximum amount of compensation.³⁹⁶ The courts can award any amount they consider fair (non-pecuniary damages) or proven (pecuniary damages). There is no information available concerning the average amount of compensation awarded to successful discrimination victims. It appears clear that the awards are the highest in disability cases, especially architectural inaccessibility cases. In 2018, the Supreme Court of Cassation expressly held that there was no restriction on the type of damages that a claimant in a discriminatory dismissal case could claim; all damages directly resulting from the impugned act were subject to compensation.³⁹⁷ However, the settled case law is that in no cases, including discrimination cases, can legal persons incur, or claim, non-pecuniary damages.³⁹⁸

c) Assessment of the sanctions

It is not known whether sanctions are effective, proportionate and dissuasive in practice, even if one were to assume that decisions imposing PADC sanctions are fully implemented, and it is not known if this is so. The rate of implementation of PADC decisions imposing fines and structural redress is not known. Whether a specific fine is an effective deterrent

³⁹¹ PADA, Article 78-80.

³⁹² PADA, Article 83.

³⁹³ PADA, Article 81.

³⁹⁴ PADA, Article 76.

³⁹⁵ PADC, Decision No. 450 of 20 November 2018 in case No. 180/2017.

³⁹⁶ 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.

³⁹⁷ SCC, Decision No. 144 of 8 June 2018 in case No. 4603/2017. See also Ruling No. 266 of 23 March 2017 in case No. 4603/2016.

³⁹⁸ For instance, Sofia City Court, Decision No. 5103 of 11 July 2018 in case No. 1693/2016.

would depend on the size of the organisation sanctioned and whether it is a business or a non-profit organisation. Similarly, the rate of implementation of court structural relief injunctions, such as accessibility orders, is not known.

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.

- b) Political, economic and social context for the designated body

While politicians from xenophobic parties do regularly attack the PADC when its annual reports are discussed in Parliament, other parties, including the Turkish minority-backed Movement for Rights and Freedoms (MRF), the socialist party and the ruling GERB, have supported it.³⁹⁹ There is no evidence of direct political interference in the PADC's governance (if the fact is disregarded that by choosing PADC members, the President and Parliament influence the body's subsequent performance).

The PADC's budget has been increasing steadily. From BGN 2 248 000 (approx. EUR 1 124 000) in 2016,⁴⁰⁰ it reached BGN 2 570 000 (approx. EUR = 1 285 000) in 2018.⁴⁰¹ In 2019 (after the cut-off date for this report), it is BGN 2 784 000 (approx. EUR 1 392 000).⁴⁰² At the same time, the PADC has stated that three of its regional offices are not operational due to a lack of funds needed to staff them.⁴⁰³ According to the PADC, the 21 operational PADC regional offices are each staffed by a single employee.⁴⁰⁴ In four of the country's 28 regions, the PADC has yet to establish a regional office, allegedly not having the means to secure local office space.⁴⁰⁵ Where PADC regional offices do exist, they are hosted in the respective regional governor's offices (rather than in facilities of the PADC's own).⁴⁰⁶

Generally, the PADC has become publicly accepted as a relevant, accessible institution and the public have been using the PADC in proceedings before it as a matter of course.

- c) Institutional architecture

In Bulgaria, the designated body does not form part of a larger body with multiple mandates. According to the PADC, the PADC is a stand-alone equality body.

On unknown legal (or policy) grounds, the PADC having no mandate under the law to deal with any criminal justice issues, the PADC serves as the OSCE National Contact Point for Hate Crime (NCPHC).⁴⁰⁷ The PADC's activities as the 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

³⁹⁹ See media reports at: www.dnes.bg/politika/2018/05/17/v-ns-ima-li-smisyl-ot-komisiyata-po-diskriminacia.376733.

⁴⁰⁰ Bulgaria, State Budget Act 2016 (*Закон за държавния бюджет за 2016 г.*), Article 28.

⁴⁰¹ State Budget Act 2018, Article 29.

⁴⁰² State Budget Act 2019, Article 28.

⁴⁰³ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁰⁴ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁰⁵ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁰⁶ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁰⁷ See: http://tandis.odhr.pl/content/documents/table_npc.pdf.

Interior. The PADC then uses their data to fill in the relevant OSCE questionnaire annually.⁴⁰⁸

In addition, the PADC is a UN-accredited National Human Rights Institution (NHRI) within the meaning of the Paris Principles. The 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. The reasons given by the Sub-Committee on Accreditation (SCA), the deciding body, for accrediting PADC as a 'B' institution include the fact that the PADC does not have a mandate to protect and promote all human rights.⁴⁰⁹ Furthermore, the 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, [the PADC]'.⁴¹⁰ The SCA has encouraged the 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 its composition.⁴¹¹

d) Status of the designated body/bodies – general independence

i) Status of the body

The PADC is a collegiate body consisting of nine members, including at least four lawyers.⁴¹² Under the law, it manages its own budget, part of the state budget.⁴¹³ It is expressly defined as having its own legal personality.⁴¹⁴ Parliament elects five of its members, including the chairperson and deputy chairperson, 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 nominees remains legally unfettered and non-transparent. The newly adopted rules do not govern the making of the presidential choice, nor do they require reasons for it to be articulated; they exclusively govern nominations. Under Parliament's new procedure, only MPs and parliamentary groups have standing to propose candidates. For a full description of both procedures, see below, Section 10. Current best practices. PADC members have a five-year term of office.⁴¹⁵ The PADC adopts its own regulations to govern its activities and

⁴⁰⁸ Inter alia, PADC Annual report for 2016, p. 158, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

⁴⁰⁹ 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>.

⁴¹⁰ 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>.

⁴¹¹ 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>.

⁴¹² Protection Against Discrimination Act (PADA), Article 41 (1).

⁴¹³ PADA, Article 40 (3).

⁴¹⁴ PADA, Article 40 (3).

⁴¹⁵ PADA, Article 41 (2).

structure, including its administration's competences and numbers.⁴¹⁶ In accordance with its own regulations, the PADC chairperson establishes the structure of PADC's administration and the job descriptions of its employees.⁴¹⁷ S/he appoints, promotes and dismisses employees⁴¹⁸ and contracts external experts.⁴¹⁹ The PADC is accountable to Parliament only. Under the law, it reports annually in writing to Parliament on its activities.⁴²⁰

The 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.⁴²¹ It informs the public about equality law provisions and carries out other activities as stipulated in its own regulations.⁴²²

ii) Independence of the body

The PADC is an independent body by law. In the PADA, it is expressly defined as an 'independent specialised state body'.⁴²³ In practice, however, the independence of the PADC has arguably been curbed by non-transparent election procedures for members, resulting in Parliament and the President choosing individuals who lack the personal qualities and professional qualifications to enable them to form opinions independently of any authority or of public opinion. While both Parliament and the President adopted rules on PADC member nominations in 2017, the President's decision-making process remains fully discretionary and non-transparent under these rules. The parliamentary procedure provides for transparency, although not necessarily for accountability, as the selection process remains political and its outcome is not necessarily merit-based. 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.

As discussed above in Section 7.c Institutional Architecture, the PADC is accredited as a 'B' rather than an 'A' National Human Rights Institution under the Paris Principles, as it does not fully conform to the Paris Principles regarding independence. The 2017 member nomination rules do not fully address these concerns.

The 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, the PADC regional representatives operate from offices provided for free by regional governors (part of the executive), located in regional government buildings.⁴²⁴ It is unclear at what level of independence a PADC regional representative would operate in practice, if they were dealing with a complaint against the regional government. The same is true of PADC regional

⁴¹⁶ PADA, Article 46.

⁴¹⁷ Bulgaria, Regulations on the Structure and Activities of the Protection Against Discrimination Commission (*Правилник за устройство и дейността на Комисията за защита от дискриминация*), Article 9.5.

⁴¹⁸ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9.6.

⁴¹⁹ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9.7.

⁴²⁰ PADA, Article 40 (5).

⁴²¹ PADA, Article 47.

⁴²² PADA, Article 47.

⁴²³ PADA, Article 40 (1).

⁴²⁴ Information officially provided by the PADC to the author of this report on 16 February 2018.

representatives' relationships with municipal governments. PADC regional representatives rely on municipal mayors and employees in each municipality to organise on-site consultations for potential complainants.⁴²⁵ The relevant 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.⁴²⁶ 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/bodies

Under the law, the 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 to which Bulgaria is a party.⁴²⁷

The PADC has stated that the six EU-protected grounds receive 'adequate and proportionate expert attention' in PADC proceedings, not specifying what particular mechanism exists to ensure this.⁴²⁸ In practice, the PADC acts on every admissible complaint or third party motion, instituting proceedings and rendering a decision (it deals with inadmissible and irregular complaints by giving guidance as to how the document may be corrected). Therefore, the number of PADC proceedings and decisions dealing with a particular ground reflects the number of complaints or third-party motions filed on that ground.

There is no indication that the PADC has been using its powers to initiate proceedings *ex officio* or to bring court proceedings in such a way so as to compensate for potential under-reporting of cases on a particular ground. In fact, the PADC has never initiated court proceedings on any ground. It has also arguably underused its mandate to initiate *ex officio* proceedings, doing so rarely and arguably not in the most important cases. The PADC has not initiated its own proceedings in controversial cases seriously affecting highly vulnerable people, such as collective arbitrary forced evictions of Roma families. There does not appear to be any internal institutional mechanism in place to ensure that the PADC prioritises under-reported 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 forward to ask 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.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

The PADC is competent under the law to provide independent assistance to victims in filing their complaints.⁴²⁹ 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. The PADC does not specify what PADC assistance to victims shall entail. While the PADC has powers under the PADA to collect

⁴²⁵ Information officially provided by the PADC to the author of this report on 16 February 2018.

⁴²⁶ Information officially provided by the PADC to the author of this report on 16 February 2018.

⁴²⁷ PADA, Article 4 (1).

⁴²⁸ Information provided by the PADC to the author of this report on 16 February 2018.

⁴²⁹ PADA, Article 47.9.

evidence *ex officio*, including in proceedings brought by complainants,⁴³⁰ the law does not define those powers as assistance to victims. In addition, the PADA provision on victim assistance specifies that assistance relates to the filing of a complaint, arguably not extending beyond filing a complaint.

According to the PADC's own regulations, its Administrative and Legal Services Directorate shall provide independent legal aid to victims.⁴³¹ The regulations do not specify what that assistance entails. Under these regulations, the PADC's 'regional representatives' provide 'methodical' help (probable intended meaning, 'methodological') and independent consultations to 'citizens and natural persons' regarding the PADA.⁴³² The regulations do not specify what the help and consultations entail. The PADC has stated that it assists complainants by explaining what the PADC's powers are, how its proceedings are structured, what a complaint must look like in order to be admissible, how an irregular complaint should be amended, what proof must be provided, etc.⁴³³ Regional representatives help locally-based parties obtain copies of documents in their cases (heard by the PADC in the capital city), inspect collected evidence, enquire about the stage proceedings have reached.⁴³⁴ Victims are given an opportunity to inspect case files, including collected evidence, in the PADC regional offices, sparing them the cost of travelling to the PADC central office in Sofia where PADC proceedings take place.⁴³⁵

Regional representatives consult people at the PADC regional offices in regional capital cities, during on-site consultations in municipalities or in individual's homes by prior appointment (for people with disabilities).⁴³⁶ The PADC regional representatives are said to be available for the range of questions interested parties might have about using PADA remedies. Under the PADA, PADC proceedings are tax-free and the losing party bears no procedural expenses.⁴³⁷ The PADC relies on this as an aspect of victim assistance. However, in court proceedings for judicial review of PADC decisions, the PADC as a matter of course claims, and is awarded, court expenses against the losing party, including complainants (victims).

For 2018, PADC reported having assisted 1 156 discrimination victims and having held 677 regional consultations for the public, with a total of 4 236 members of the public having visited its regional offices and consultations.⁴³⁸

In terms of practical independence, as mentioned, PADC victim assistance at the regional and municipal levels is questionable, as PADC regional representatives who provide that assistance are hosted free of charge by regional and local governments and receive pro bono logistical support from mayors' administrations.

In terms of effectiveness, there appears to be no mechanism in place to evaluate the quality of victim consultation and assistance provided by the PADC. The professional qualifications and experience of PADC staff providing victim

⁴³⁰ PADA, Articles 55-57.

⁴³¹ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 20 (1.1).

⁴³² Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 23 (2.1).

⁴³³ Information provided by the PADC to the author of this report on 16 February 2018.

⁴³⁴ PADC replies to questions from the country expert for the purposes of this survey, 16 February 2018.

⁴³⁵ PADC replies to questions from the country expert for the purposes of this survey, 16 February 2018.

⁴³⁶ PADC replies to questions from the country expert for the purposes of this survey, 16 February 2018.

⁴³⁷ PADA, Article 52.

⁴³⁸ PADC (2018) *Годишен отчет за 2018 г.* (Annual Report 2018), p. 7, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

assistance are unclear. The PADC provided no information on this when asked by the author of this report. It is also 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 people 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.

ii) Independent surveys and reports

The PADC does have the competence to conduct independent surveys and publish independent reports. The law expressly provides for this.⁴³⁹

In the PADC's practice, publishing reports has largely been taken to mean publishing the PADC's annual activity reports to Parliament. Those reports have not contained information resulting from any surveys of discrimination since 2009. Indeed, the PADC has carried out few surveys of discrimination and inequalities. It only reports five studies over the course of its 14-year existence.⁴⁴⁰ Those studies mostly contain sociological data on prejudices against various vulnerable groups.⁴⁴¹

As a whole, the 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 the PADC annual reports to Parliament, the information given on its survey findings is not substantive or specific. As a whole, the PADC annual reports avoid any analysis of the current political, social, and legal situation in terms of discrimination and equality and instead focus on accentuating the PADC's activities.

The PADC demonstrated a distinct lack of independence with regard to a study it carried out in 2011 and publicly disowned after public and official backlash. The study, 'National independent [PADC] study on stereotypes and prejudices in school textbooks, teaching materials, curricula and pre-school and primary school plans', published on the PADC's website in 2012,⁴⁴² was construed by the media as advocating for iconic Bulgarian writers' works to be removed from textbooks. In particular, a reference in the study to a poem by Hristo Botev, a symbolic national revolutionary poet, as an example of discriminatory portrayal of non-Bulgarians, was considered outrageous by many: '[...] But damn, mother, damn this Turkish black banishment that exiled us in your youth [...]' (*'Но кълни, майко, проклинай таз турска черна прокуда, дете нас млади пропъди'*). There was an outcry and the then minister of education held two press conferences to assure everyone that no iconic writers would be abolished from the curricula. At the second press conference, held at the behest of the then and now Prime Minister Boyko Borissov, the education minister declared

⁴³⁹ PADA, Article 47.10-11.

⁴⁴⁰ PADC information officially provided to the author of this report on 16 February 2018. The reports are: *Дискриминация и необективните нагласи въз основа на етническа принадлежност, пол, увреждане, сексуална ориентация, възраст и вяравания* ('Discrimination and partial attitudes based on ethnicity, gender, sexual orientation, disability, age and belief') (2007); *Предразсъдъци и дискриминация срещу имигрантите и бежанците* ('Prejudices and discrimination against immigrants and refugees') (2009); *Предразсъдъци и дискриминация срещу малцинствени деца и деца с увреждания в образователната система* ('Prejudices and discrimination against minority children and children with disabilities in the educational system') (2009); *Проучване и оценка на въздействието на икономическата криза и бюджетните съкращения върху уязвимите групи* ('A survey and evaluation of the impact of the economic crisis and budget cuts on vulnerable groups') (2014); and *Национално представително социологическо изследване на териториален признак с цел идентифициране и изработване на профили на групите и общностите, най-силно засегнати от риск от дискриминация* ('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).

⁴⁴¹ PADC information officially provided to the author of this report on 16 February 2018.

⁴⁴² Available at: www.kzd-nondiscrimination.com/layout/images/stories/izsledwane_na_kzd/KZD-reshenie.doc.

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'.⁴⁴³

The PADC then proceeded to publicly state that it had no recollection or record of how the study was commissioned but that it was commissioned during the previous PADC members' term of office. It then removed the study from its website.⁴⁴⁴ Later, on an unspecified date, the study was reinstated on the website. This incident is an indication that the PADC has not been independent in practice when carrying out its mandate to survey discrimination and publish its findings (and possibly its other mandates).

As mentioned above, PADC annual activity reports addressed to Parliament avoid any analysis of the current political, social and legal situation in terms of discrimination and equality. The reports focus instead on accentuating the PADC's activities. This approach on the part of PADC is arguably part of a policy of avoiding controversy in the parliamentary debates on the PADC reports. These parliamentary discussions and the ensuing parliamentary approval of the PADC's reports are tied to subsequent parliamentary approval of the PADC's annual budget for the following year. Avoiding controversy so as to minimise resistance to budgetary approval appears to be a marker of a lack of independence.

iii) Recommendations

The PADC does have the competence to make recommendations on discrimination issues. The law expressly provides for this.⁴⁴⁵ The PADC is also competent to issue injunctions, to public and private actors alike.⁴⁴⁶

In the PADC's practice, it primarily makes 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 or administrative practice, including architectural environments. Outside the context of its adjudicating role, the PADC provides opinions, possibly including recommendations, on draft legislation and policy within the framework of joint working groups with other public institutions.⁴⁴⁷ The proceedings, the PADC role in them and the outcomes are not transparent.

While the PADC is relatively active in making recommendations, no data are 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, in order then to compare this with the number of cases where a recommendation was actually made. Furthermore, given the 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 also no data on the rate of implementation of PADC recommendations or on its policy and practice

⁴⁴³ See media reports, inter alia at: www.dnevnik.bg/bulgaria/2012/08/14/1887858_sergeri_ignatov_bottev_ostava_v_uchebnicite/; www.dnevnik.bg/bulgaria/2012/08/16/1889323_kabinetut_posegatelstvoto_vurhu_istoriata_e_zaplaha/.

⁴⁴⁴ See media reports, inter alia at: www.dnevnik.bg/bulgaria/2012/08/17/1890029_komisiiata_sreshtu_diskriminaciiata_se_otreche_ot/; <https://news.bg/bulgaria/ot-kzd-zashtitiha-skandalnoto-izsledvane-na-uchebnitsite-gotovi-sa-za-novo.html>.

⁴⁴⁵ PADA, Article 47.6, 47.8 and 47.11.

⁴⁴⁶ PADA, Article 42.2-4.

⁴⁴⁷ PADC information officially provided to the author of this report on 16 February 2018.

on securing implementation. It is unclear what the PADC does if bodies ignore its recommendations.

In terms of independence, there are no reliable data to assess whether the PADC's decisions about whether or not to make a recommendation, and what to recommend and to whom, are possibly affected by internalised 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 make to regional governors who provide the PADC with office space free of charge or to municipal mayors who provide logistical support for PADC local outreach free of charge.

On the other hand, under settled case law, the PADC recommendations as such are not subject to appeal, as the Supreme Administrative Court considers that they have no legal consequences on the parties receiving these recommendations.⁴⁴⁸ This means that the parts of PADC decisions containing recommendations become final on the decisions being delivered. This should serve as a relatively liberating factor for PADC decision-making regarding recommendations. Of course, there is always public opinion to face.

iv) Other competences

The PADC is first and foremost a quasi-judicial body, hearing, investigating and deciding cases of discrimination, and imposing penalties and injunctions.⁴⁴⁹ It is also competent to take and join court cases.⁴⁵⁰ The PADC is further competent to provide opinions on draft legislation and policy,⁴⁵¹ keep a public register of its decisions and injunctions,⁴⁵² inform the public of equality law provisions⁴⁵³ and undertake other activities as stipulated under its own regulations.⁴⁵⁴

g) Legal standing of the designated body/bodies

In Bulgaria, the designated body 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*.⁴⁵⁵

In practice, however, the PADC has not been using these powers and they remain nominal. The reasons for this 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 (more neutral) adjudicator

⁴⁴⁸ For instance, SAC, Decision No. 5302 of 24 April 2018 in case No. 11143/2016.

⁴⁴⁹ PADA, Article 47.1-4

⁴⁵⁰ PADA, Article 47.5.

⁴⁵¹ PADA, Article 47.8.

⁴⁵² PADA, Article 47.7.

⁴⁵³ PADA, Article 47.12.

⁴⁵⁴ PADA, Article 47.13.

⁴⁵⁵ PADA, Article 47.5: '[The 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.'

role to directly 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 fines (no compensation), 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 non-profit organisations or small businesses.⁴⁵⁶ PADC decisions are subject to judicial review before two instances of administrative courts, including the Supreme Administrative Court.

The 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 the 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. The PADC does not clarify in its reports whether these examples are representative. It only gives four to five examples in each annual report whereas it issues hundreds of decisions every year. In some of the PADC-reported examples, when a PADC decision in a case enters into force, the PADC sends out an invitation to the concerned party to implement the decision voluntarily.⁴⁵⁷ In response, some parties send PADC financial evidence that they have paid their fine⁴⁵⁸ 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 or building alteration designs).⁴⁵⁹ In one case where the PADC ordered a respondent to adopt intra-institutional equality rules, to prove implementation the party sent the PADC a copy of the rules, along with a statement that the rules were posted in the company's offices for employees to take note of.⁴⁶⁰ In a case where the PADC ordered an Internet news company to moderate user comments in order to exclude hate speech, the respondent notified the PADC that it had undertaken action to improve its automatic word filtering system.⁴⁶¹ It is unclear whether in that case the PADC was satisfied with the company taking action or whether it insisted on further results.

In a case where the respondent organisation only informed the PADC that its management were notified of the PADC decision ordering the respondent to reform its ageist job competition rules, the PADC has not reported having taken any further action to demand substantive implementation.⁴⁶² In some cases, the PADC appears to accept statements by respondents that a PADC decision was implemented despite a lack of any specific information as to the measures taken or proof.⁴⁶³

⁴⁵⁶ Under Article 78 (1) PADA, the maximum fine for a breach of equality law is BGN 2 000 (EUR 1 000).

⁴⁵⁷ See PADC, *Годишен отчет за 2016 г.* (Annual Report for 2016), pp. 137-139, available in BG at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

⁴⁵⁸ PADC, *Годишен отчет за 2016 г.* (Annual Report for 2016), pp. 137-139, available in BG at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

⁴⁵⁹ PADC, *Годишен отчет за 2016 г.* (Annual Report for 2016), pp. 137-139, available in BG at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf. See also PADC, *Годишен отчет за 2015 г.* (Annual Report for 2015), pp. 81-83, at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁴⁶⁰ PADC, *Годишен отчет за 2015 г.* (Annual Report for 2015), pp. 81-83, at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁴⁶¹ PADC, *Годишен отчет за 2015 г.* (Annual Report for 2015), pp. 81-83, at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁴⁶² PADC, *Годишен отчет за 2014 г.* (Annual Report for 2014), pp. 74-79, at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

⁴⁶³ PADC, *Годишен отчет за 2014 г.* (Annual Report for 2014), pp. 74-79, at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

In some cases, the PADC has reported having sent the respective entity an invitation for voluntary implementation and, when no implementation followed, the PADC reported no further PADC action.⁴⁶⁴

Because there are no statistical data on the rates of implementation of PADC decisions, it is unclear whether the body's decisions are respected in practice.

i) Registration by the body/bodies of complaints and decisions

In Bulgaria, the body does register the number of complaints of discrimination made and decisions issued. However, it does not methodically break the data down by ground, field, type of discrimination, etc. For instance, in the PADC annual reports for 2016, the data are only broken down by specialised panel (each dealing with more than one ground) and not by specific ground, field, form of discrimination or other criteria. These incomplete PADC statistics are available to the public. The PADC publishes the data in its annual reports to Parliament, which are accessible on its website after Parliament approves them (which it sometimes delays). According to the PADA, the PADC shall keep a public register of its decisions and injunctions.⁴⁶⁵

In 2018, the PADC received 600 complaints and *actio popularis* motions and instituted 721 proceedings.⁴⁶⁶ The PADC initiated ex officio proceedings on 386 occasions and rendered 511 decisions altogether.⁴⁶⁷ Disability was an alleged ground of discrimination in 459 proceedings, age in 51 proceedings and ethnicity in 28 proceedings.⁴⁶⁸ In 181 cases, disability was the only alleged ground and in 20 cases, age was the only alleged ground.⁴⁶⁹ There was one sexual orientation case.⁴⁷⁰ In six race/ ethnicity cases, the PADC found discrimination; it rejected 12 such complaints and dismissed six on procedural grounds.⁴⁷¹ In 2018, the PADC decided five cases related to religion.⁴⁷² In 2018, the PADC rejected 116 multiple discrimination allegations and found multiple discrimination in 57 cases; it dismissed 52 such allegations on procedural grounds.⁴⁷³

In 2017, 535 complaints and *actio popularis* motions were filed with the PADC (according to the PADC, 478 complaints and 42 motions (the numbers do not match)).⁴⁷⁴ Based on these, 300 cases were instituted.⁴⁷⁵ In 2017, 15 PADC cases concerned ethnicity (no race cases); one case concerned religion/ faith; two cases – conviction; 50 cases – disability; there were no sexual orientation cases; and multiple discrimination (including grounds not

⁴⁶⁴ PADC, *Годишен отчет за 2014 г.* (Annual Report for 2014), pp. 74-79, at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

⁴⁶⁵ PADA, Article 47.7.

⁴⁶⁶ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 7, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁶⁷ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 7, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁶⁸ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 11, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁶⁹ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 29, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁷⁰ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 29, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁷¹ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 14, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁷² PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 20, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁷³ PADC, *Годишен отчет за 2018 г.* (Annual Report for 2018), p. 33, available at (in BG): <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁴⁷⁴ PADC, *Годишен отчет за 2017 г.* (Annual Report for 2017), pp. 152-153, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2.2017.pdf.

⁴⁷⁵ PADC, *Годишен отчет за 2017 г.* (Annual Report for 2017), pp. 152-153, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2.2017.pdf.

protected under EU law) – 135 cases.⁴⁷⁶ In 2016, the PADC reported 938 complaints and 46 *actio popularis* motions, 368 proceedings and 510 decisions.⁴⁷⁷

j) Stakeholder engagement

In Bulgaria, the designated body does engage with stakeholders as part of implementing its mandate, including trade unions, national and European NGOs, employers' organisations (such as the Bulgarian Industrial Association, the Bulgarian Chamber of Commerce and Industry and the Bulgarian Industrial Capital Association), central and local government authorities, universities and foreign embassies.

k) Roma and Travellers

The PADC does not treat Roma as a priority. It has stated that it does not have designated, additional funding to treat Roma as a priority.⁴⁷⁸ The PADC reports that most Roma-based complaints it deals with concern hate speech in the media, which in practice means that most of these motions 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.).

⁴⁷⁶ PADC, *Годишен отчет за 2017 г.* (Annual Report for 2017), p. 13, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2.2017.pdf.

⁴⁷⁷ PADC, *Годишен отчет за 2016 г.* (Annual Report for 2016), p. 135, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

⁴⁷⁸ PADC, *Годишен отчет за 2016 г.* (Annual Report for 2016), p. 135, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Information dissemination by Bulgaria has been limited, with only the PADC taking such action. It has consisted of arguably superficial and insufficient general awareness-raising measures, briefing journalists on PADC pending cases and hearings,⁴⁷⁹ the numbers of complaints and third-party motions, the prevalence of certain protected grounds or fields, the number of decisions, including precedents⁴⁸⁰ and the possibilities for individuals to be assisted centrally and regionally.⁴⁸¹ The PADC has also organised seminars for legal practitioners, Ministry of Interior officials and educators.

There has been insufficient or no community outreach, with groups such as the Roma and people with sensory impairments remaining isolated from the dissemination.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The 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. There is no mechanism for NGOs to provide the PADC with their input on the law or practice, other than joining individual cases in an 'interested party' capacity (with discretionary permission from the PADC). The PADC has not engaged important, if any, NGOs in consultations regarding amendments to the legislation it has reportedly initiated.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

No such action is on record.

- d) Addressing the situation of Roma and Travellers

The National Council for Cooperation on Ethnic and Integrational Issues within the Government is the body charged with coordinating and controlling the implementation of the National Strategy of the Republic of Bulgaria for Integration of the Roma (2012 - 2020). This body is not dedicated to the Roma exclusively. Within it, there is a Commission for Roma Integration.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) Mechanisms

According to general legal principles, the PADA as *lex specialis*/more recent/primary law should override general, older and secondary legislation that conflicts with it. In practice, this depends on judicial interpretation. There is no special mechanism to ensure that existing discriminatory norms are set aside, other than litigation before the courts or the PADC.

According to the PADA, all public authorities, including local government, are required to

⁴⁷⁹ Letter No 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

⁴⁸⁰ Letter No 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

⁴⁸¹ Letter No 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

respect the aim of not allowing any direct or indirect discrimination when drafting legislation, as well as when applying it.⁴⁸² This mainstreaming duty complements the general duty under the PADA for all public authorities to take all possible and necessary measures to achieve the aims of PADA.⁴⁸³ Formally, this provides a sufficient legal basis for bodies to revise any legislation that contradicts the PADA. In practice, this has not been done. A failure to do so could be challenged before the PADC on general non-implementation grounds under the PADA, there being no special provision on sanctions referring to this particular duty. The PADC could then, under the PADA, make a declaration and impose a sanction and also issue an instruction or recommendation for implementation.

The case law is contradictory in terms of whether parties can seek protection from discriminatory norms under PADA procedures. In the past (2014), the Supreme Administrative Court (SAC) made a restrictive interpretation to the effect that the PADC was incompetent to declare a legal norm discriminatory.⁴⁸⁴ The Constitutional Court (CC) had to declare such a norm unconstitutional (concerning primary law) or the administrative courts had to repeal such a norm under general administrative procedure (concerning secondary legislation). (Standing to bring CC proceedings is limited - no individual may do this and only directly affected parties can seek judicial review of secondary legislation.) While this has not become settled case law, as of 2018, the case law is still contradictory in terms of whether the PADC or the courts can declare a legal norm discriminatory in PADA proceedings.

For instance, in 2018, SAC held that a university had discretion to adopt a rule limiting access to applying for certain academic jobs on grounds of age (maximum age requirements) and the complainant's treatment (he was not considered as an applicant because of being older) could not constitute discrimination as it was not personal, but provided for under a general rule.⁴⁸⁵ On the other hand, the same court has established as its settled case law, following Case C-406/15 *Petya Milkova*, that the (administrative) courts must set aside legislation depriving civil servants with disabilities of the advance protection against dismissal that employees enjoy and, by implication therefore, any legislation conflicting with EU equality rights.⁴⁸⁶ Other examples of 2018 case law accepting that legal norms can be declared discriminatory in PADA proceedings include a case where the PADC held that a piece of secondary legislation was indirectly discriminatory as it did not provide for extramural studies in law;⁴⁸⁷ and a number of cases where the SAC declared secondary legislation excluding certain categories of patients from fully-funded treatment for their diseases discriminatory,⁴⁸⁸ as well as other secondary legislation in breach of disability equality rights.⁴⁸⁹

b) Rules contrary to the principle of equality

There are various rules in primary and secondary legislation that arguably contradict PADA.⁴⁹⁰ A major effort is required to ensure that all laws and regulations are brought into

⁴⁸² PADA, Article 6 (2).

⁴⁸³ PADA, Article 10.

⁴⁸⁴ SAC, Decision No. 5645 in case No. 15991/2013; and Decision No. 15637 in case No. 1925/2014.

⁴⁸⁵ SAC, Decision No. 4159 of 30 March 2018 in case No. 4591/2016.

⁴⁸⁶ See, inter alia, SAC, Decision No. 4151 of 30 March 2018 in case No. 494/ 2015; Decision No. 6558 of 17 May 2018 in case No. 12550/ 2017; and more in Section *Case law* below.

⁴⁸⁷ PADC, Decision No. 144 of 28 March 2018 in case No. 28/ 2018.

⁴⁸⁸ SAC, Decision No. 363 of 10 January 2018 in case No. 9234/ 2016, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016, Decision No. 5302 of 24 April 2018 in case No. 11143/ 2016, and more – see Section *Case law* below.

⁴⁸⁹ SAC, Decision No. 7706 of 11 May 2018 in case No. 4602/ 2018

⁴⁹⁰ Examples of directly discriminatory legislation: Bulgaria, Judiciary Act (*Закон за съдебната власт*), Article 162 (mental health related disability ('mental illness') bar (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)

conformity with the principle of equality.⁴⁹¹

(<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan016453.pdf>); Defence and Armed Forces Act (*Закон за отбраната и въоръжените сили*), Article 141 (age bars to employment) (www.comd.bg/en/acts/republic-bulgaria-defence-and-armed-forces-act); Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), Article 155 (age and health bars to employment, referring to an ordinance by the Minister) (www.lex.bg/laws/ldoc/2136243824) (in BG); Diplomatic Service Act (*Закон за дипломатическата служба*), Article 27 (mental disability ('chronic mental illness') bar) (www.lex.bg/bg/laws/ldoc/2135565718) (in BG); Classified Information Protection Act (*Закон за защита на класифицираната информация*), Article 40 (mental disability ('mental illnesses') bar) (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 ('mental illness') bar to access to employment) (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.

⁴⁹¹ The whole body of legislation, including statutory law and secondary legislation, should be reviewed and analysed for incompatibilities with the PADA. Careful thinking should be done to devise ways of harmonising conflicting norms with the PADA. This will not only require conflicting norms to be amended or repealed, but also for the 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, and 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 specialised in one or more grounds in one or more fields, while others cover all grounds in specific fields. The relationships between the various authorities' mandates are not clear and there is overlap. Their relevance for the implementation of the directives is limited at best. They are mentioned here for exhaustiveness.

Within the Council of Ministers, the *National Council for Cooperation on Ethnic and Integrational Issues* (NCCEII) is a consultative body with a mandate to assist with governmental policy on minorities and to coordinate between the government and NGOs representing minorities.⁴⁹² The 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.⁴⁹³ The 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 the strategy's implementation.⁴⁹⁴ At regional level, there are 27 councils on ethnic and integration issues; these are local versions of the NCCEII. They 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.⁴⁹⁵ It develops and funds projects promoting equal access to education for ethnic minority students.⁴⁹⁶ It fundraises from donor institutions and receives a subsidy from the Ministry of Education's budget.⁴⁹⁷

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.⁴⁹⁸ At the MLSP, there is also a *Social Inclusion Directorate*.⁴⁹⁹

The *National Council on Integration of People with Disabilities* is a similar consultative body.⁵⁰⁰ Its tasks include: assisting the implementation of policy for the integration of people with disabilities; studying and analysing disabled people's needs and making proposals for action to authorities, organisations and commercial entities; giving opinions on draft legislation for disabled people's integration; facilitating coordination between authorities and other organisations and the organisations of and for people with disabilities;

⁴⁹² Bulgaria, Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues (*Правилник за устройството и дейността на националния съвет за сътрудничество по етническите и интеграционните въпроси към министерския съвет*), Article 1 (www.lex.bg/laws/ldoc/2135541318) (in BG).

⁴⁹³ Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues, Article 2 (1.5) (www.lex.bg/laws/ldoc/2135541318) (in BG).

⁴⁹⁴ See: http://iisda.government.bg/ras/executive_power/council/222 (in BG).

⁴⁹⁵ Decree N 4 of the Council of Ministers of 11 January 2005 establishing the CEICSEM, Article 1.

⁴⁹⁶ Decree N 4 of the Council of Ministers of 11 January 2005, Article 2.

⁴⁹⁷ Decree N 4 of the Council of Ministers of 11 January 2005, Article 9.

⁴⁹⁸ Information on the Ministry of Labour and Social Policy's website, available at: www.mlsp.government.bg/index.php?section=POLICIES&lang=eng&I=306 (in BG).

⁴⁹⁹ Administrative Registry, State Administration Information System (in BG), available at: http://iisda.government.bg/ras/executive_power/ministry_organigram/87?verId=181203000000038001.

⁵⁰⁰ Bulgaria, Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities (*Правилник за устройството и дейността на националния съвет за интеграция на хората с увреждания и критериите за представителност на организациите на и за хора с увреждания*), adopted 17 December 2004, establishing NCIPD, Article 2 (www.lex.bg/laws/ldoc/2135497189) (in BG).

interacting with other consultative bodies and disability NGOs and international organisations; and raising public awareness of disability issues.⁵⁰¹

The *Agency for People with Disabilities*, an executive body within the MLSP, is charged with implementing public policy on integration of people with disabilities.⁵⁰² Its tasks include: creating and maintaining a database of people with officially certified long-term disabilities;⁵⁰³ keeping a register of the specialised 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 funds to employers for adapting workplaces to disabled people's needs; giving opinions on draft legislation pertaining to disability; reporting annually on the measures for disabled people's integration.⁵⁰⁴

There is no governmental structure to deal with sexual orientation policy. There is also no department dealing with equality and non-discrimination issues relating to religion/ belief.

There is no National Action Plan on anti-racism or anti-discrimination.

⁵⁰¹ Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, Article 3 (www.lex.bg/laws/ldoc/2135497189) (in BG).

⁵⁰² Bulgaria, Structural Regulations of the Agency for People with Disabilities (*Устройствен правилник на агенцията за хората с увреждания*), Article 2 (1) (www.lex.bg/laws/ldoc/2135497051) (in BG).

⁵⁰³ Certification is initiated by people with disabilities for the purposes of accessing entitlements. As a matter of course, personal data protection legislation requirements apply to the process (consent from the individual, no release of data to third parties).

⁵⁰⁴ Structural Regulations of the Agency for People with Disabilities, Article 2 (1) (www.lex.bg/laws/ldoc/2135497051) (in BG).

10 CURRENT BEST PRACTICES

A. A Social movement for disability rights makes new laws

In April 2018, parents of children with disabilities, notably mothers, mounted a campaign for laws securing disability rights, using the Bulgarian Presidency of the Council of the EU as an amplification tool. Initially backed by NGOs, the campaigners commenced daily protests to pressure the government into initiating legislative drafting. Their core demands were for new legislation securing adequate personal and financial assistance for children and adults with disabilities based on a reliable assessment of individual needs capable of enabling effective access to education and employment for people with disabilities. In particular, they demanded that the new People with Disabilities Act (PDA), which the Government had programmed in order to implement the CRPD and which it had started work on in early 2018, reflect their immediate concerns for practical access for people with disabilities to resources corresponding to their actual needs. The campaigners, led by the mothers, organised themselves informally into a nation-wide network, claiming direct leverage through first-hand participation in shaping the new rights and policies within governmental legislative drafting processes. The campaigners alleged that the large, institutionalised organisations of people with disabilities which had been integrated into the governmental structures for policy formulation did not truly represent the interests of people with disabilities as those organisations were subsidised by the government and therefore not independent.

The campaigners set up a large tent next to the Parliament building, announcing they intended to keep up a daily presence for an indefinite period in order to bring political pressure to bear on lawmakers. The campaigners' slogan was 'The System is Killing Us' and, using symbols of death and invoking the CRPD, they garnered and sustained intense media attention for the course of the next eight months. Children and adults with disabilities regularly took part in the protests as well. In Parliament, tension built, with opposing parties weaponising the campaigners' political criticisms in their rivalry. By June, the campaigners had secured their inclusion in the governmental working group drafting the new PDA.

Meanwhile, the Ombudsman had introduced a draft Personal Assistance Act (PAA), which she claimed was consulted upon and backed by the campaigning mothers of people with disabilities. While the government and certain NGOs initially opposed this draft, eventually a reworked version was integrated into the joint drafting process pushed by the campaigning mothers and, at the end of the process, the Government adopted the draft and introduced it into Parliament together with the draft PDA.

Parallel to the draft PDA and PPA, the Government drafted a new Social Services Act (SSA). Eventually, this draft law was added to the draft PDA and PPA and the three pieces of legislation formed a new disability rights framework, collectively driven by the mothers' campaign. The campaigning mothers ended up viewing the SSA, as well as the PDA and the PPA, as their campaign's achievement.

At one point, the Minister of Labour and Social Policy resigned under the pressure of the campaigners' demands. However, the campaigners threatened accelerated protests aimed at securing the entire Government's resignation, if the Minister did not return to do the work with them. The Prime Minister then recalled the Minister. At another point, the campaigners ousted a Deputy Minister of Labour over her attendance at a UN session in New York to present Bulgaria's implementation progress under the CRPD. Towards the end of the process, they caused a Deputy Prime Minister to resign over ableist hate speech (see below).

Throughout these proceedings, the campaigners kept up their daily tent presence next to Parliament, as well as a subsequently established separate tent camp in front of the Council

of Ministers building, staying overnight at critical negotiation points. Their social mobilisation spread to other cities, in addition to Sofia, where local campaigners also used rallies and tent camps next to governmental buildings to mark their presence and stake their claims. The campaigners' announced intention was to keep up protesting until the new laws were adopted.

Parallel to this, they took a direct part, as did the Ombudsman, in the drafting of the PDA and PPA, together with the government. In July, a PDA draft was ready, backed by the campaigners. The campaigners then set a time-limit for Parliament to adopt this draft, as well as the draft PPA, of 1 October 2018.

Throughout the summer and autumn of 2018, the campaigning mothers kept up their public presence, including in their tent camps, accentuated by rallies and cavalcades, while the draft PDA, PPA and SSA evolved under their pressure. As the draft laws were not adopted on 1 October 2018, on the next day the campaigners blocked an important intersection and symbolic square in Sofia, and stepped up rallies elsewhere. On 10 October, they blocked another important intersection by the Council of Ministers' building and stayed overnight in their tent camp there. Subsequently, on being incensed by disparaging remarks on the part of one of the Deputy Prime Ministers (see below), the campaigning mothers mobilised mass protests for a month in October-November. They kept up their tent presence in front of the Council of Ministers until the PDA and PPA were adopted by Parliament on 5 December and 6 December 2018, respectively.

Thus, in an unprecedented victim-driven legislative effort, the authorities were compelled to accept a new disability rights framework, reflecting the affected community's agenda as opposed to the priorities of experts or (supranational) institutions.

B. Deputy Prime Minister ousted over ableist hate speech

In the course of the mothers' campaign for disability rights described above, on 16 October 2018, following a governmental discussion of the draft PDA, together with trade unions and employers' organisations, where the central issue were disability employment quotas and employers' financial liability in cases of non-compliance, Valery Simeonov, then Deputy Prime Minister, made a televised statement disparaging the draft law: 'This law was initiated as an attempt to placate a group of shrill women who speculated with their children, who smeared society, parading those ostensibly sick children without an ounce of motherly feeling or care for them. They just used them in a most unconscientious way as a tool to attain their purely materialistic goals.'⁵⁰⁵ According to Simeonov, the draft law would burden employers by requiring them to hire people with disabilities. Employers' organisations had opposed the quotas and sanctions.

Simeonov's statement caused a public outcry, with the informal 'The System Is Killing Us' steering group of activist mothers of people with disabilities demanding his resignation and accelerating their demonstrations. Protesters mobilised on social media for rallies in Sofia and a number of other cities. Their demands for Simeonov's resignation explicitly invoked his use of hate speech.⁵⁰⁶ MPs followed suit and demanded his resignation. Simeonov refused to apologise, claiming his statement was taken out of context.

On 18 October 2018, the government approved the draft PDA he had attacked and brought it to Parliament. On 19 October, Prime Minister Boyko Borissov offered a conditional apology for Simeonov's words ('...I can say to them "I am sorry"'), and recommended that

⁵⁰⁵ See newspaper report at: www.dnevnik.bg/bulgaria/2018/10/16/3328252_tristranniat_suvet_podkrepi_proekta_zahorata_s.

⁵⁰⁶ See a social media announcement of the protesters' demands and rally call: www.facebook.com/events/1528901983923025/.

Simeonov apologise himself.⁵⁰⁷ Simeonov only apologised, 'to all who felt offended' on 24 October, following days of protest rallies around the country driven by campaigning mothers of people with disabilities. On 26 October, Parliament provisionally adopted the new PDA, as well as the draft Personal Assistance Act, the second piece of legislation to secure disability rights pushed for by campaigners. The protesting mothers owned this success, claiming that parliamentarians had now recognised what they, the mothers, had fought for for years.⁵⁰⁸ Nevertheless, daily protests against Simeonov continued for a total of 26 days, involving cavalcades and roadblocks. As a result, on 16 November 2018, Simeonov resigned and the campaigning mothers danced a victory choro (a traditional circular dance) in Sofia at the end of a cavalcade.⁵⁰⁹

Simeonov, among many other Bulgarian politicians, had often used anti-minority hate speech, most notably on grounds of race and religion, to further his political goals. This, however, was possibly the first instance of anti-disability hate speech of such intensity at this institutional level in Bulgaria. The reaction of the community and the public, as well as their success in bringing about his resignation, were also unprecedented. Following a month of daily protests, a Deputy Prime Minister was ousted for a single hate statement by sheer strength of social mobilisation.

C. Public procedures for nominating and hearing PADC members

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 membership of the PADC.⁵¹⁰ Prior to this, since 2004, selections had taken place informally, the institutions exercising unfettered discretion, with a lack of any transparency, accountability or public participation.

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 a specially created website⁵¹¹ and candidates are heard and voted on in open sessions.

Parliamentary procedure

Members of Parliament and parliamentary groups have standing to nominate candidates. Written submissions are required to substantiate a candidate's 'high professional and moral qualities'. The substantive criterion is provided for in the 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 website mentioned above at least seven 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 website. 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 website.

⁵⁰⁷ See newspaper report at: www.dnevnik.bg/politika/2018/10/19/3330297_borisov_otkaza_da_obsujda_ostavka_na_simeonov_imal/.

⁵⁰⁸ See newspaper report at: www.vesti.bg/bulgaria/politika/peti-den-protest-s-iskane-za-ostavka-na-valeri-simeonov-6087955.

⁵⁰⁹ See newspaper report at: www.bgonair.bg/bulgaria/2018-11-16/protesti-protesti-protesti-i-valeri-simeonov-hvarli-ostavka.

⁵¹⁰ See Parliament's rules here: www.parliament.bg/pub/cW/20170712024906reshenie.pdf (in BG). See the President's rules here (in BG): 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 (www.president.bg/docs/1499352591.pdf).

⁵¹¹ Available at: www.parliament.bg/bg/KZD2017.

Candidates are heard in an open DHRC session, broadcast live on the website. Candidates are introduced by those who nominated them (up to three minutes). Candidates then set out their plans as a PADC member (up to seven minutes). The DHRC chair presents all opinions and questions by NGOs and the media. Candidates respond to these (up to five minutes). MPs may ask questions (up to two minutes per question). Candidates respond (up to five minutes). Complete minutes are kept and then published on the special website. The DHRC makes a report on the hearing and files it with Parliament, together with a proposed decision regarding each candidate. Parliament holds a plenary session broadcast live on the website, with the candidates present. The DHRC report is heard, candidates are discussed and voted on individually. Voting is by open ballot. A simple majority is sufficient.

The President's procedure

Public bodies, central as well as local government, NGOs and individuals may propose candidates. Written submissions 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 produces a report for the President, including reasoned proposed decisions. Information concerning candidates who are considered eligible under the terms of the PADA is published on the President's website. The information remains accessible for seven days. The President makes a discretionary decision, taking into account the information gathered and the committee's opinion.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives

Legislation

- The definition of incitement to discrimination in the PADA, including instructions to discriminate, expressly requires direct intent.
- The definition of racial segregation in the PADA expressly requires the state of separation to be 'forced'.⁵¹² The European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.⁵¹³
- PADA defines indirect discrimination in an unclear, confusing way, thwarting implementation.

Case law

In 2014, the Supreme Administrative Court (SAC), the final instance reviewing PADC decisions, made a number of restrictive requirements for PADA enforcement contradicting the PADA, as well as EU law, which are listed below.⁵¹⁴ Specifically, these decisions contradicted: Article 2.1 of Directive 2000/43/EC and Article 2.1 of Directive 2000/78/EC that prohibit *all* discrimination; Article 7.1 of Directive 2000/43/EC and Article 9.1 of Directive 2000/78/EC that require protection for *all* victims to be ensured; as well as the CJEU ruling in the *Firma Feryn* case.⁵¹⁵ As of 2018, while these problematic rulings have not become settled case law, they have not been conclusively recalled either. At best, the case law is inconsistent and arguably unreliable.

The restrictive decisions below do not seem to be triggered by a particular ground but, in the view of the author of this report, by an illiberal concern for the disruptive potential of discrimination law to equip individuals and other private actors with initiative and tools to change social structures, including those determining the allocation of public funds, occasioning (possibilities for) non-negligible redistribution. These possibilities are particularly relevant in age/ pension cases and disability cases involving access to public funding and large-scale accessibility, as well as in all cases where legislation codifies (political/ administrative) expediency and budgetary decisions.

Enhanced capacity-building for judges to internalise the concepts and procedural/ remedial aspects of EU non-discrimination law would be helpful. On the other hand, these same judges should not be underestimated, given time, as they have already developed a remarkable body of novel disability rights case law, transforming non-discrimination litigation into a tool to be reckoned with for socio-economic rights development well beyond the conceptual constraints of existing EU non-discrimination law. Unfortunately, this empathetic and liberal, pro-rights judicial activism (in the best sense) only applies to people with disabilities and notably does not apply to ethnic or sexual minorities.

Problematic SAC rulings:

- The PADC may not declare every breach of the PADA and other equality laws a breach, or sanction it. Instead, it may only recognise those breaches that meet the definition of an administrative breach under the general Administrative Breaches and

⁵¹² PADA, Additional Provision, § 1.6.

⁵¹³ For instance, *D.H. v. Czech Republic*, judgment of 13 November 2007; *Sampanis v. Greece*, judgment of 5 June 2008; *Orsus v. Croatia*, judgment of 16 March 2010 (GC).

⁵¹⁴ See Section 12.2.

⁵¹⁵ 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*.

Sanctions Act. This requires the establishment of a concrete action/ omission, a concrete perpetrator, a concrete victim and guilt.

- A concrete victim needs to be identified. Discrimination, in order to be found, has to be a concrete fact and not a hypothetical possibility.⁵¹⁶
- A perpetrator can only be a natural person. Legal persons can be perpetrators only exceptionally, in cases expressly provided for by law.
- A public authority cannot be a perpetrator – only an individual exercising its competence.
- A legal provision cannot constitute discrimination as it is not a concrete action or omission. The adoption of a legal provision is not a concrete action or omission either.
- The PADC may not declare laws to be discriminatory: a law that was not declared unconstitutional by the Constitutional Court cannot be discriminatory.
- The PADC may not declare secondary legislation to be discriminatory either: secondary legislation that was not declared unlawful by the SAC (under general administrative procedure) could not be discriminatory.
- Where the PADC finds a legal norm to contradict equality law, it may not declare a breach of the law. It may not order the responsible authority to repeal or amend the impugned norm. The PADC may only make a recommendation or take legal action before the SAC (where secondary legislation is concerned).

As stated above, this set of declarations has not been overturned in any decisive way. However, in 2018, case law contradicted some of those problematic decisions. Legal persons were found liable for acts of discrimination.⁵¹⁷ A concrete victim was not required in at least eight cases (of hate speech and disability rights, access to education and positive measures under secondary legislation).⁵¹⁸ At least 14 cases against public authorities were decided.⁵¹⁹ Secondary legislation was declared discriminatory in at least five cases.⁵²⁰ Guilt (intent) was generally not discussed.

Nevertheless, the case law with regard to *intent* is contradictory, with several decisions in 2018 effectively requiring intent, including in cases of harassment. See Sections 2.2 a) and 2.4 a) for further detail. Other problems with the handling of *harassment* include rulings requiring a difference of treatment or discussing a possible justification. See Section 2.4 a) for more detail.

The case law also remains contradictory and unstable with regard to the *liability of legal persons, including public bodies*, including for secondary legislation adopted by the latter. For more detail, see Section 3.1.2 b).

⁵¹⁶ SAC, Decision No. 15637 of 19 December 2014 in case No. 1925/2014. The case concerned the application of an age bar under secondary legislation.

⁵¹⁷ For instance, SCC, Ruling No. 478 of 18 June 2018 in case No. 462/ 2018; PADC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017; SAC, Decision No. 356 of 10 January 2018 in case No. 8993/ 2016, Decision No. 4931 of 17 April 2018 in case No. 10370/ 2016, Decision No. 5516 of 26 April 2018 in case No. 187/ 2017, Decision No. 6072 of 10 May 2018 in case No. 1225/ 2017, Decision No. 7863 of 12 June 2018 in case No. 697/ 2017, Decision No. 13854 of 13 November 2018 in case No. 12257/ 2017, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

⁵¹⁸ For instance, Burgas Administrative Court, Decision No. 564 of 23 March 2018 in case No. 1786/ 2017; PADC, Decision No. 450 of 20 November 2018 in case No. 180/ 2017, Decision No. 144 of 28 March 2018 in case No. 28/ 2018, Decision No. 183 of 3 May 2018 in case No. 287/ 2016; SCAC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018; SAC, Decision No. 2138 16 February 2018 in case No. 13552/ 2016, Decision No. 9270 of 6 July 2018 in case No. 1069/ 2017, Decision No. 4238 of 2 April 2018 in case No. 70/ 2017.

⁵¹⁹ For instance, SCC, Ruling No. 478 of 18 June 2018 in case No. 462/ 2018; SAC, Decision No. 356 of 10 January 2018 in case No. 8993/ 2016, Decision No. 4931 of 17 April 2018 in case No. 10370/ 2016, Decision No. 13854 of 13 November 2018 in case No. 12257/ 2017.

⁵²⁰ For instance, SAC, Decision No. 2138 of 16 February 2018 in case No. 13552/ 2016, Decision No. 5302 of 24 April 2018 in case No. 11143/ 2016, Decision No. 7706 of 11 May 2018 in case No. 4602/ 2018; SCAC, Decision No. 7471 of 10 December 2018 in case No. 9628/ 2018; PADC, Decision No. 144 of 28 March 2018 in case No. 28/ 2018.

In 2018, the courts and the PADC continued occasionally *to conflate the concepts of direct and indirect* discrimination. See Section 2.2 a) for more detail. In conflating direct and indirect discrimination, adjudicators have in some of cases applied *justifications* that are only relevant to indirect discrimination to cases of direct discrimination or harassment. For more detail, see Section 2.2 b).

Case law has revealed issues with judges' acceptance of '*mixed reasons*' cases. In 2018, the SAC and SCAC held that discrimination would require less favourable treatment on the basis of a protected ground *alone*, thereby excluding discrimination cases where other factors were also at play, together with protected grounds. The SAC case law also contains flaws with respect to identifying the *proper comparator* (including a *hypothetical* one), the *relevant protected ground* and a *causal link* between impugned treatment and a protected ground. See Section 2.2 a) for more detail.

In terms of recognising discrimination *by perception*, in 2017-2018, the SAC held, in at least two cases, that discrimination was not proven unless, 'the objective fact of [a protected ground] was established'.⁵²¹ See Section 2.1.3 a) for more detail.

The PADC and the courts are struggling with the rule on *shifting the burden of proof*. See Section 6.3 for more detail.

Under settled SAC case law, including in 2018, public interest (*actio popularis*) *litigants* expressly have *no standing to appeal* against PADC decisions. See Section 6.2 c) for more detail.

Since 2016, the SAC and the Supreme Court of Cassation (final instance in civil cases) have consistently held, in a number of cases, that employees/ civil servants 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 were not their age but their entitlement to a pension, and their entitlement to a pension was not based on age, as seniority was taken into account too.⁵²² None of these rulings discussed proportionality or any other justification.

The case law has been inconsistent and unreliable as regards the competence of the administrative courts as opposed to the civil courts in terms of anti-discrimination claims against public bodies. This issue is discussed in detail above in Section 6.1.

Equality body practice

The 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, as well as collective forced evictions, among other structural issues.

There is no reliable measurement of the implementation rate of PADC decisions. In cases of non-compliance, the PADC has no formal powers other than to impose further fines.

Contrary to the PADA, the courts order losing parties in PADA proceedings to pay costs and expenses.⁵²³ The PADA expressly states that proceedings are exempt from all fees and costs, but the courts frustrate this provision because it requires them to pay the latter from

⁵²¹ SAC, Decision No. 6151 of 11 May 2018 in case No. 7203/ 2016.

⁵²² SAC, Decision No. 611 of 12 July 2016 in case No. 1541/2016; Decision No. 4418 of 14 April 2016 in case No. 4245/2016; Decision No. 2988 of 9 March 2018 in case No. 13638/ 2017; Decision No. 4727 of 12 April 2018 in case No. 2769/ 2018. SCC, Ruling No. 368 of 18 May 2018 in case No. 483/ 2017; Ruling No. 401 of 28 May 2018 in case No. 188/ 2018. For more detail, see Section 4.7.1 a) above.

⁵²³ *Inter alia*, SAC, 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.

their own budgets. This case law means that complainants against PADC decisions have to pay PADC legal representation costs. The PADC actively seeks costs at the expense of losing complainants, claiming to be bound by law to do so.⁵²⁴

11.2 Other issues of concern

The current Government rules in coalition with two parties which the European Commission Against Racism and Intolerance has termed 'ultranationalist/ fascist': the National Front for the Salvation of Bulgaria and VMRO-BND.⁵²⁵ ⁵²⁶ The current Cabinet includes three members designated by those parties, two of whom are Deputy Prime Ministers.

⁵²⁴ PADC letter No. 44-00-1609 of 20 April 2015 addressed to an individual named Boyko Boev.

⁵²⁵ Internal Macedonian Revolutionary Organisation - Bulgarian National Movement (*Вътрешна Македонска Революционна Организация - Българско Национално Движение*).

⁵²⁶ ECRI, Report on Bulgaria, published 16 September 2014.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

On 18 December 2018, Parliament adopted a new law governing the rights of people with disabilities for the purposes of the implementation of the Convention on the Rights of Persons with Disabilities (CRPD). The People with Disabilities Act (PDA), one of a package of disability-related laws,⁵²⁷ entered into force on 1 January 2019 (after the cut-off date for this report; certain individual provisions have later entry into force dates). The PDA's language is rights-based and its stated aims are to guarantee people with disabilities full and equal enjoyment of rights and dignity, while making their social inclusion possible and supporting them and their families. The law's stated principles are equal treatment based on an individual approach and individual assessment of needs, as well as personal choice and independence, accessibility and full participation.

The PDA provides for new definitions of 'persons with disabilities', 'persons with long-term disabilities', reasonable accommodation and a range of other relevant concepts. 'Persons with disabilities' are 'persons with a physical, mental, intellectual or sensory insufficiency, which in interaction with the environment may hinder their full and effective participation in the life of society'. 'Persons with long-term disabilities' are 'persons with a long-term physical, mental, intellectual or sensory insufficiency, which in interaction with the environment may hinder their full and effective participation in the life of society, and who are medically certified as having a disability classified as 50 % or more'. The repealed Integration of People with Disabilities Act (IPDA) (repealed as of 1 January 2019, after the cut-off date for this report) defines 'disability' as 'any loss or impairment of the anatomical structure, physiology or psychology of a given individual'. In the IPDA, 'a person with a long-term disability' is defined as 'a person who, as a result of an anatomical, physiological or psychological disability has long-term reduced possibilities to perform activities in a manner and to a degree possible for a healthy person, and who medical authorities have certified as having reduced working ability, or have certified as having a disability of 50 % more.'

While the new definitions contained in the PDA are closer to the language of Article 1 CRPD compared to those in the IPDA,⁵²⁸ the definition of long-term disability still, unfortunately, retains the medical approach to disability.

The PDA provides for support interventions in the fields of healthcare, education, employment, housing, urban environments, transport, culture, information, sport, public life and justice. It envisages rehabilitation, social services, labour support, accessible information, reasonable accommodation, access to justice and legal defence, personal assistance and personal mobility and more.

A Monitoring Council is to be established in accordance with the PDA comprised of nine members, to observe and report on compliance with the CRPD. It includes representatives of the Ombudsman, the PADC, organisations of, and for, people with disabilities and academia. Another consultative body, the National Council for Persons with Disabilities, is to be established within the Council of Ministers (the government). Its members represent the State, organisations of, and for, people with disabilities, employees' organisations, employers' organisations and municipalities. Its role is to be a vehicle for cooperation and coordination in formulating disability rights policy. In particular, it is competent to give opinions on draft legislation and strategic programming and plans.

⁵²⁷ Including the Personal Assistance Act, adopted in December 2018 (entered into force on 1 January 2019), which governs the provision of personal services (help with day-to-day life) for people with disabilities. While it has no provisions on equality rights, it does state that personal assistance is a means to secure rights enjoyment and full participation. www.lex.bg/bg/laws/ldoc/2137189213 (in BG).

⁵²⁸ People with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

The PDA governs individual needs assessments, defining their scope, aims and procedure. Based on their individually assessed needs, people with disabilities are entitled to financial assistance for the purposes of obtaining aids, appliances and equipment as needed. People with long-term disabilities are entitled to financial assistance for the purposes of obtaining a car, adapting housing, rehabilitation and renting of municipal accommodation, as well as monthly monetary assistance. The levels of the latter are enhanced for the various sub-groups of people with disabilities as compared with the provisions of the repealed IPDA. People with disabilities are furthermore entitled to social services, personal assistance and other support based on their needs as individually assessed.

The PDA also provides for social inclusion support, including five types of rehabilitation, defining the concept and aims of rehabilitation in general as a right, as well as its five types. Under the PDA, students with disabilities are entitled to support in schools based on individual assessments. Schools and higher education institutions have duties to provide inclusive environments, including special adjustments. In the field of employment, people with disabilities are entitled to job-seeking intermediary and consultation services and the government is charged with devising measures to enhance their opportunities. Importantly, the PDA introduces employment quotas for people with long-term disabilities. Employers with 50 to 99 employees must hire at least one person with a long-term disability, while employers with 100 or more employees must hire at least two people with long-term disabilities per 100 employees. In case of non-compliance, employers are subject to fines (the maximum amount is BGN 5 000 (EUR 2 500), doubled in cases of repeat violations).

In addition, employers are under a duty to adjust the workplace to the needs of an individual with disabilities upon hiring. Employers are eligible for public funding awarded by the Agency for Persons with Disabilities for purposes of providing reasonable accommodation of jobs, inter alia, including accessibility and special equipment. Employers are also eligible for various other economic stimuli and alleviations linked to employing people with disabilities. The PDA further defines and governs specialised enterprises and cooperatives of people with disabilities. These are entitled to subsidies and tax or social security reliefs. The law further defines and governs protected employment centres designed to provide employment for people with multiple long-term disabilities.

The PDA articulates a range of accessibility and reasonable accommodation rights in terms of public environments, including accessible information and transport and personal mobility. In addition, people with disabilities who experience serious difficulties (these are defined) with taking specific legal actions are entitled to assisted decision-making. Judicial and other institutions are under a duty to provide effective access to justice, including procedural and other support measures.

Under the law, the Agency for Persons with Disabilities is to create and maintain a database on people with disabilities, including a personal profile for every individual, reflecting their health, educational and socio-economic status, social inclusion possibilities, demographics and other aspects. The data are to be used for policy-formulation. The PDA provides that, 'the data shall be collected and processed in accordance with personal data protection requirements' (Article 82 (6)). In practice, this would mean the individuals with disabilities would sign consent forms. (But they would have to sign them if they want to access opportunities and resources under the law.) It would also presumably mean that third parties would not have free access to the database. According to the PDA, the 'terms and conditions on registering, maintaining and using the data [...] shall be governed under the regulations on the implementation of the law' (Article 82 (7)). In addition, the Agency for Persons with Disabilities is to keep a public electronic register of specialised enterprises and cooperatives of people with disabilities, as well as a public electronic register of providers of aids and tools for people with disabilities.

As opposed to the IPDA, the PDA does not ban or define any forms of discrimination. This has no consequences for the equality rights of people with disabilities, as they are fully covered under the PADA. Prohibitions and definitions under the IPDA unnecessarily overlap with the PADA.

While the PDA provides for reasonable accommodation duties, which can be considered to amount to non-discrimination provisions, these provisions contain no prohibitions of discrimination, nor do they define violations of the said duties as discrimination.

12.2 Case law

Roma

Name of the court: Supreme Court of Cassation

Date of decision: 18 June 2018

Name of the parties: Plovdiv District Court and Plovdiv Regional Court v. P.T.

Reference number: Ruling No. 478 in case No. 462/ 2018

Address of the webpage:

<http://domino.vks.bg/bcap/scc/webdata.nsf/vCourtActsByCase/D16858FB4E57883FC22582B0003BD859> (in BG)

Brief summary: The Supreme Court of Cassation (SCC) refused to admit in appeal, thereby rendering it final, a decision by the Plovdiv Appellate Court in a compensation case brought by a Roma woman against the Plovdiv District Court and the Plovdiv Regional Court. The latter two courts discriminated against the claimant in her criminal trial by sentencing her to effective imprisonment based on her Roma ethnicity, explicitly reasoning that this was necessary as opposed to probation due to 'a feeling of impunity among minority groups'. In 2010, the European Court of Human Rights (ECtHR), in its judgment in the case,⁵²⁹ found that this race-based refusal to suspend the applicant's sentence constituted discrimination. Further to the ECtHR's judgment, the criminal case against the applicant was reopened at the national level and her sentence substituted for a suspended one. Based on that, she filed a compensation claim against the courts for discriminating against her. She was awarded BGN 5 000 (EUR 2 500) for her almost two years of discriminatory imprisonment. (She had claimed BGN 80 000.)

Name of the court: Burgas Administrative Court

Date of decision: 23 March 2018

Name of the parties: Valery Simeonov v. A.A.

Reference number: Decision No. 564 in case No. 1786/ 2017

Address of the webpage: www.admcourt-bs.org/CMS_ADM/images_content/1786_2017R.htm (in BG)

Brief summary: Burgas Administrative Court (BAC) confirmed a decision by the PADC to the effect that Valery Simeonov, Deputy Prime Minister at the time, was liable for anti-Roma harassment (hate speech) by means of public statements, including the following: '*[Roma] have become brazen, presuming, and brutalised human-like [creatures], demanding a right to salary without doing work, wanting sickness assistance without being sick, child assistance for children who play with pigs in the street, and maternity assistance for women with the instincts of stray bitches.*' Simeonov made the impugned statements in Parliament as an MP in 2014. A Roma individual brought a complaint against him to the PADC, claiming his statements amounted to harassment and incitement to discrimination against the Roma community, as well as the individual complainant. The PADC agreed and imposed a fine of BGN 1 000 (EUR 500) on Simeonov, as well as an injunction to abstain from further such statements. On appeal from Simeonov, BAC found that the impugned statements were an affront to Bulgarian Roma, creating an intimidating environment for all of them. The statements were not protected within the ambit of freedom of expression. Their public nature and ensuing dissemination in the media, their author being a

⁵²⁹ Paraskeva Todorova v. Bulgaria (37193/07).

parliamentary party leader, indicated greater potential to impinge upon the dignity of those targeted. Therefore, BAC confirmed the sanctions imposed by the PADC.

Name of the court: Protection Against Discrimination Commission

Date of decision: 20 November 2018

Name of the parties: H.N. v. NMG AD and M.Z.

Reference number: Decision No. 450 in case No. 180/ 2017

Address of the webpage: www.dnevnik.bg/file/3353411.pdf (in BG)

Brief summary: In a case brought by a Roma activist, the PADC found a newspaper article entitled 'Gypsies are Bulgarian terrorists' constituted anti-Roma harassment (hate speech). The PADC held that the content negatively stereotyped Roma by using harsh language linking them to crime. The PADC explicitly reasoned that intent was irrelevant and the sole nature of the language and its propagation was sufficient to cause an affront to the dignity of all Roma, including the complainant personally, regardless of the fact that he was not mentioned. Taking into account the paper's high circulation, the PADC expressly concluded that the effect must have been intended and therefore found incitement to discrimination, as well as harassment. The PADC held that, in principle, hate speech disseminated in public or through the media, including articles, constituted incitement to discrimination, as well as harassment, because by its nature such content is aimed at influencing public opinion. The PADC articulated hate speech assessment standards: taking into account the context, as well as the content of impugned language, the aim and the effect on the public.

The PADC found both the company owning the paper as a legal entity and its executive as a natural person were liable. It imposed the maximum fine of BGN 2 000 (EUR 1 000) on the company, as well as, separately, on its executive, and ordered both to abstain from any further comparable statements. The PADC took into account the fact that those same persons were sanctioned for similar conduct by a 2010 PADC decision, including an injunction to put an internal mechanism in place to prevent hate speech content from being published, and to report on the results to the PADC, in addition to a fine of BGN 800 (EUR 400).

Name of the court: Sofia City Administrative Court

Date of decision: 10 December 2018

Name of the parties: A. Association v. Minister of Education

Reference number: Decision No. 7471 in case No. 9628/ 2018

Address of the webpage:

<http://search.admincourtsofia.bg/Acts/GetActContent?BlobID=226654> (in BG)

Brief summary: Sofia City Administrative Court (SCAC) repealed a decision by the PADC to the effect that the Minister of Education was not liable for ethnic discrimination on grounds of having provided for scholarships exclusively for Roma school students. The complainant association (a 'patriotic' NGO, focusing on history and culture, prioritising initiatives to do with children, including a number for the integration of children with disabilities; no other litigation on record) had alleged that non-Roma students were discriminated against, as the Centre for Educational Integration of Children and Students from Ethnic Minorities (the Centre) made scholarships available only to their Roma counterparts with a view to preventing Roma school dropout. The grants were provided within the framework of a targeted project operated by the Centre. The Centre, a government-created institution, was designated to help implement the Strategy for Educational Integration of Children and Students from Ethnic Minorities adopted by the Minister of Education. Based on the premise that different groups of students have different needs and, therefore, require different support for the purposes of ensuring equal access to education, the Centre operated the impugned scholarships as a positive action measure designed to compensate for Roma disadvantage. The PADC found the measure was lawful and rejected the complaint.

However, SCAC considered that the measure constituted direct ethnic discrimination against non-Roma. The court compared the impugned Roma scholarships to generally

available scholarships for academic achievement and noted that the latter were only awarded to excellent or very good students, while Roma scholarships were not dependent on a high-achieving academic record, a minimum achievement being sufficient. In addition, for the purposes of general scholarships for high academic achievement, very good students were required to demonstrate socio-economic need in order to become recipients, whereas Roma students were not required to show economic hardship in order to be the recipients of the impugned Roma scholarships. Moreover, SCAC noted, the amounts awarded with the general academic achievement scholarships, even for the best students, were several times lower than the levels of Roma scholarships awarded even to the lowest achievers. The court concluded that students should indeed be encouraged to continue their studies but not on the basis of ethnicity. Ethnic-based scholarships were not the only means to the legitimate aim pursued and they disproportionately disadvantaged non-Roma students. Lack of funds was not the only reason for Roma school dropout (there was also a lack of motivation) and there were also indigent non-Roma students, the court noted; Roma students should be encouraged to make more of an academic effort before being awarded financial stimuli. The PADC decision was repealed.

Disability

a. Accessibility

Name of the court: Supreme Administrative Court

Date of decision: 10 January 2018

Name of the parties: Plovdiv Municipality v. P.P.

Reference number: Decision No. 356 in case No. 8993/ 2016

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/fce809cf017f3215c2258205002ee9c0?OpenDocument (in BG)

Brief summary: The Supreme Administrative Court confirmed a decision by Plovdiv Administrative Court (PAC) to the effect that the Plovdiv City Municipality was liable for maintaining an inaccessible urban environment to the detriment of the claimant, a medically certified wheelchair user with 100 % disability, in need of personal assistance, who was awarded BGN 3 500 (EUR 1 750) in non-pecuniary damages. PAC held that the city had a duty under the Integration of People with Disabilities Act to render public buildings and infrastructure accessible by the end of 2006, a duty the respondent had failed to deliver on. PAC had appointed a technical expert to assess the level of accessibility of the public environment, including transport. The expert certified that 17 public places were inaccessible to the claimant. PAC held that this inaccessibility amounted to discrimination under the PADA 'in its most intense form – harassment' (no legal ground for holding that harassment is the most intense form of discrimination). The SAC confirmed the finding of harassment and further qualified the inaccessibility as 'direct discrimination in its most severe form – harassment' (again, with no legal ground). Based on this finding, the SAC held that the claimant did not need to prove his non-pecuniary damages – they were to be presumed, unless the respondent refuted them. The SAC interpreted the rule on shifting the burden of proof as signifying that, since inaccessibility was established beyond any reasonable doubt, the respondent bore the onus of disproving the claimant's damages. The award of BGN 3 500 was confirmed. However, the municipality was not ordered to make the environment accessible.

Name of the court: Supreme Administrative Court

Date of decision: 17 April 2018

Name of the parties: Sevlievo District Court v. M.M.

Reference number: Decision No. 4931 in case No. 10370/ 2016

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/2313f40c341402e9c22582710025fcdb?OpenDocument (in BG)

Brief summary: The Supreme Administrative Court (SAC) confirmed a decision by

Gabrovo Administrative Court (GAC) to the effect that Sevlievo District Court (SDC) discriminated against a claimant with disabilities by maintaining an environment inaccessible to him as a litigant. GAC awarded the claimant BGN 3 500 in non-pecuniary damages. The claimant, a wheelchair user, was not able to access the courtrooms independently where his case was heard; he had to be carried there by his assistants. SDC claimed that the claimant's case was deliberately heard in courtrooms on the ground floor so that he would be able to have access. SDC's defence was that it lacked the funding and that it was technically impossible for the building to be altered so as to be made accessible. The SAC held that accessibility meant independent access and SDC had a duty to secure accessibility, with any alleged lack of funding or technical difficulty being irrelevant, as liability for discrimination in the form of inaccessibility was incurred regardless of the reason for the inaccessibility. Any measures to compensate for the lack of accessibility were irrelevant as people did not have to make use of such compensatory arrangements but were entitled instead to independent access. Because the complainant was forced to use his assistants' help, he was stressed and humiliated during his seven visits to the court for hearings, wherefore the award of compensation was confirmed. However, SDC was not ordered to render its building accessible.

Name of the court: Supreme Administrative Court

Date of decision: 26 April 2018

Name of the parties: 'Elkhitsa' Unified Children's Establishment No. 59 (public kindergarten) v. B.T.

Reference number: Decision No. 5516 in case No. 187/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/aec6d3a5b25b8cc6c2258279004a86c0?OpenDocument (in BG)

Brief summary: A claim for damages was brought by the mother of a child with disabilities who was not admitted for full-time care at the respondent public kindergarten on grounds of his disability (he was only taken for an hour and a half per day). His mother, after having obtained a decision by the Protection Against Discrimination Commission that this refusal amounted to direct discrimination, brought court proceedings, seeking both non-pecuniary and pecuniary damages resulting from the expenses of enrolling her child in an alternative, privately owned kindergarten. Sofia City Administrative Court awarded her BGN 5 382 (EUR 2 691) for pecuniary damages and dismissed her claim for non-pecuniary damages. The Supreme Administrative Court confirmed this decision.

Name of the court: Supreme Administrative Court

Date of decision: 10 May 2018

Name of the parties: Telenor Bulgaria AD v. N.I.

Reference number: Decision No. 6072 in case No. 1225/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/6892747827777436c22582880040dd11?OpenDocument (in BG)

Brief summary: The Supreme Administrative Court confirmed a decision by Sofia City Administrative Court, confirming a decision by the Protection Against Discrimination Commission (PADC). The PADC had found that a mobile network operator discriminated against a person with disabilities by requiring all clients, including the complainant, to visit its offices in person in order to conclude a service contract, while the complainant, a stroke and hip joint replacement survivor, was prevented from doing so due to mobility issues. The PADC ruled that the company's refusal to allow contracts to be concluded by proxy was discriminatory against people with disabilities. The complainant had authorised her son to represent her for the purposes of signing a contract with Telenor, the company. A notary public had verified her power of attorney. However, Telenor declined, based on its general terms and conditions. In the PADC proceedings, the company did not dispute the facts but argued that its policy did not target people with disabilities and that Telenor was entitled to set its own terms and conditions. Telenor also claimed that the complainant should have disclosed her health condition.

The PADC found that the impugned policy, while applicable to all, by its nature put people with disabilities at a disadvantage, for which the company had failed to present any justification (indirect discrimination). The PADC held that the company's demand for the complainant to disclose her condition was at odds with the principles of dignity, choice and independence of people with disabilities under the UN Convention on the Rights of Persons with Disabilities. The PADC ordered the company to immediately discontinue its practice of requiring in-person signing of contracts and to change its general terms and conditions in that respect and fined the company BGN 2 500 (EUR 1 250).

Name of the court: Protection Against Discrimination Commission

Date of decision: 28 March 2018

Name of the parties: PADC (*ex officio*) v. Council of Ministers (the government)

Reference number: Decision No. 144 in case No. 28/ 2018

Address of the webpage: www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1141-2018 (in BG)

Brief summary: Initiating its own proceedings in this case, the PADC ruled that Article 3, section 1 of the Ordinance on Unified State Requirements for Acquiring Higher Education in Law as a Major provided for indirect discrimination on grounds of disability and age, among other grounds, by not providing for extramural studies in law. The PADC issued an injunction for the Council of Ministers to discontinue this violation by reinstating the possibility for extramural (correspondence) studies along with full-time studies. While the text of the PADC decision is not yet publicly available (not being final), the expected reasoning is that, due to mobility issues, people with disabilities, as well as older students who need to pursue employment, are more likely to be prevented from attending full-time studies.

b. Denial of publicly funded medical care

Name of the court: Supreme Administrative Court

Date of decision: 10 January 2018

Name of the parties: Minister of Healthcare v. K.Ch.

Reference number: Decision No. 363 in case No. 9234/ 2016

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/4d828e961a2e01d6c225820500349b4a?OpenDocument (in BG)

Brief summary: The Supreme Administrative Court (SAC) partially confirmed a decision by Plovdiv Administrative Court (PAC) in a compensation case brought by a patient with mucoviscidosis (cystic fibrosis). The claimant sought both pecuniary and non-pecuniary damages resulting from secondary legislation adopted by the respondent minister, which excluded her illness from the list of illnesses whose treatment was fully funded by the National Health Insurance Fund. As a result of the minister's omission to include her illness among those eligible for fully funded treatment, the claimant sustained damages, having to pay herself for medication and materials.

In prior proceedings brought before the Protection Against Discrimination Commission (PADC) by other people living with the same illness over the same issue, the PADC had found direct discrimination in respect of all mucoviscidosis patients. On this basis, the claimant brought her compensation case and PAC awarded her BGN 4 000 (EUR 2 000) for non-pecuniary damages. PAC held that her non-pecuniary damages were not subject to being proven as, in accordance with relevant ECtHR jurisprudence (no specific cases relied on), a discrimination act necessarily resulted in such damages. Regarding the claimant's alleged pecuniary damages, PAC held she had failed to establish the necessary direct link between her treatment not being fully funded by the State and her alleged treatment expenses. The SAC confirmed the lower court's decision, except for the latter aspect. The SAC remanded the case for renewed consideration in order for the lower court to establish the relationship between the minister's established discriminatory omission to provide for full funding of the claimant's treatment and the latter's treatment costs. PAC was required

to answer what the financial consequences for the claimant would be if she was not discriminated against, i.e. if her medical treatment was fully funded by the State.

Name of the court: Supreme Administrative Court

Date of decision: 16 February 2018

Name of the parties: Minister of Healthcare v. Openly About Wounds Association

Reference number: Decision No. 2138 in case No. 13552/ 2016

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/d5f5ad7cee4ad7d9c22582330037669d?OpenDocument (in BG)

Brief summary: The case was brought before the Protection Against Discrimination Commission (PADC) by the complainant association representing patients with hidradenitis suppurativa. They complained of discrimination by means of secondary legislation that excluded their condition from the list of illnesses whose medical treatment at home was publicly funded. The PADC found indirect discrimination and harassment. Based on the reasons, it is not clear why direct discrimination was not chosen instead as the legal qualification. In the view of the author of this report, it is possible to hypothesise that adjudicators occasionally choose indirect discrimination rather than direct discrimination due to an unwillingness to be overly judgmental of a particular respondent (based on a perception that indirect discrimination is 'less offensive' than direct discrimination). In terms of harassment, again, in the view of the author of this report, domestic adjudicators tend to perceive the concept of harassment (whose definition, basically, refers to hurtful conduct) outside the established framework of traditional case law and to associate it with psychologically injurious treatments in general. In this case, empathising with people with disabilities, the adjudicators possibly considered the former's selective deprivation of public support for accessible medication to be mentally grievous, as well as materially detrimental. On appeal, Sofia City Administrative Court confirmed the PADC's decision. On cassation appeal, the Supreme Administrative Court (SAC) held that the impugned exclusion of affected patients was unequal treatment in contravention of the CRPD; the impugned omission on the part of the respondent minister also constituted harassment.

Name of the court: Supreme Administrative Court

Date of decision: 24 April 2018

Name of the parties: Minister of Healthcare v. K.I.

Reference number: Decision No. 5302 in case No. 11143/ 2016

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/dfeeefc27d3b094fc22582740027341f?OpenDocument (in BG)

Brief summary: In this case, the PADC had found that the respondent minister's omission to provide for public funding for a life-saving 'resynchronising system for cardioverter defibrillator stimulation' needed by the complainant constituted a violation of the minister's duties under the PADA to take all necessary measures to achieve the goals of equality law, including positive measures. The impugned omission also amounted to discrimination within the meaning of the CRPD and ICCPR. The PADC issued a recommendation for the treatment to be made fully available free of charge for patients in need. On appeal, Sofia City Administrative Court confirmed this decision. On cassation appeal, the Supreme Administrative Court confirmed the lower court's decision, holding that the minister was under a duty to find the necessary budgetary balance and, using the available financial resources to the maximum, to guarantee the implementation of the State's duties under the CRPD. This included securing the necessary reasonable accommodation – cardioverter defibrillator stimulation treatment. The SAC held that this was not a case of direct discrimination but of a failure to meet the authorities' duties under the PADA to take the necessary measures to attain the law's aims, as well as discrimination under the CRPD and ICCPR; therefore, no comparison was needed.

- c. Civil servants advance protection against dismissal (cases of the type of Case C-406/ 2015 *Petya Milkova*)

Name of the court: Supreme Administrative Court

Date of decision: 30 March 2018

Name of the parties: Minister of Youth and Sports v. M.D.

Reference number: Decision No. 4151 in case No. 494/ 2015

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/a5693d7db4934806c2258217004444ea?OpenDocument (in BG)

Brief summary: The complainant appealed against her dismissal as a civil servant by the respondent minister. As in Case C-406/ 2015 *Petya Milkova*, she did not benefit from advance protection against dismissal (prior authorisation by the Labour Inspectorate in cases of recognised illnesses included in a list provided for under secondary legislation). According to the Civil Servant Act, civil servants are not entitled to the specific advance protection the Labour Code envisages for employees with certain disabilities (diseases). Following Case C-406/ 2015 *Petya Milkova*, the Supreme Administrative Court has resolved such cases by extending, based on the CRPD, the Labour Code's specific advance protection for employees to civil servants as well. In the case of M.D., similarly, it held that her dismissal was unlawful as it was discriminatory against her as a civil servant with a disability compared to private sector employees with disabilities. The SAC interpreted the Labour Code system of advance protection as a positive measure to compensate for inequality, which should benefit the entire vulnerable category of people with disabilities.

Name of the court: Supreme Administrative Court

Date of decision: 17 May 2018

Name of the parties: Minister of Environment and Waters v. R.P.

Reference number: Decision No. 6558 in case No. 12550/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/1c37ffe2625b269ac225828f004bf05d?OpenDocument (in BG)

Brief summary: The complainant appealed against her dismissal as a civil servant by the respondent minister. As in Case C-406/ 2015 *Petya Milkova*, she did not benefit from advance protection against dismissal (prior authorisation by the Labour Inspectorate in cases of recognised illnesses (disabilities) included in a list provided for under secondary legislation). According to the Civil Servant Act, civil servants are not entitled to such specific advance protection only envisaged, under the Labour Code, for employees. Based on Case C-406/ 2015, the Supreme Administrative Court and other administrative courts have been resolving such cases by extending the Labour Code's specific advance protection for employees to civil servants as well. In the case of R.P., similarly, it held that her dismissal was unlawful as she did not benefit from such protection.

Name of the court: Supreme Administrative Court

Date of decision: 31 July 2018

Name of the parties: Minister of Youth and Sports v. M.K.

Reference number: Decision No. 10283 in case No. 6150/ 2018

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/63d6763e5c9584d8c22582cd0054bf2f?OpenDocument (in BG)

Brief summary: This case is similar to the previous two.

Name of the court: Supreme Administrative Court

Date of decision: 8 November 2018

Name of the parties: Minister of Environment and Waters v. R.P.

Reference number: Decision No. 13700 in case No. 8499/ 2018

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/de3db0da09e8a2a9c225833c003901ad?OpenDocument (in BG)

Brief summary: This case is similar to the previous three.

d. Individual needs as a determining factor for (monetary) assistance

Name of the court: Supreme Administrative Court

Date of decision: 11 April 2018

Name of the parties: Minister of Labour and Social Policy & Council of Ministers v. Zh.S.

Reference number: Decision No. 7706 in case No. 4602/ 2018

Address of the webpage:

www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/808524b0e764193dc225826c002e2d80?OpenDocument (in BG)

Brief summary: The court repealed provisions of the Regulations on the Implementation of the Integration of People with Disabilities Act because these provisions used the guaranteed minimum income as a criterion for determining the amounts of social integration payments for people with long-term disabilities. The case was brought by a person with disabilities who claimed that individual need was the proper criterion and using universal amounts (e.g. 15 % of the minimum income for transport, 20 % of the minimum income for information and telecommunications) amounted to typification as opposed to individualised differentiation. Conversely, integration assistance payments were not meant as livelihood assistance for universal basic needs but as a means to meet specific individual integration needs resulting from specific individual disabilities. A three-member panel of the Supreme Administrative Court (SAC) agreed, holding that standardising integration payments contravened the CRPD, as it hampered the realisation of the basic rights of people with disabilities. A five-member panel of the SAC (final instance) confirmed this decision. The court noted that the IPDA itself posited a person's individual needs as the principal criterion for determining the amount of monetary integration assistance for that person. The inadequate amounts of such assistance meant personal mobility, social inclusion, freedom of expression, access to information, and education and rehabilitation as guaranteed by the CRPD were all thwarted.

e. Negative stereotyping

Name of the court: Protection Against Discrimination Commission

Date of decision: 3 May 2018

Name of the parties: V.I. et al. v. V.T.

Reference number: Decision No. 183 in case No. 287/ 2016

Address of the webpage: https://frognews.bg/files/kzd_1.pdf (in BG)

Brief summary: The case was brought by activists campaigning for the rights of children with disabilities (parents of children with disabilities) against a member of the UN Committee on the Rights of the Child from Bulgaria, alleging that the latter stated in public that children with disabilities were not a concern of the State Child Protection Agency but instead of the Social Assistance Agency. The PADC held that, as a public figure of authority, the respondent had overstepped the line of free expression, using words stereotyping children with disabilities as a passive recipient of State aid policy as opposed to rights holders. The respondent was found liable for direct discrimination and the PADC issued a recommendation for her to abstain from further such statements.

Sexual orientation

Name of the court: Supreme Administrative Court

Date of decision: 10 October 2018

Name of the parties: M.M. v. T.P.

Reference number: Decision No. 12113 in case No. 5381/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/846f94e5f48ceb17c22583210031c92d?OpenDocument (in BG)

Brief summary: The respondent, an assistant notary public, refused to certify a power of attorney signed by the complainant, a gay man seeking to authorise his lawyer to file a motion on his behalf for his local municipality to issue him with a certificate to the effect

that there were no impediments to his marrying his same-sex partner in the Netherlands. The respondent notary public refused her services on the ground that domestic legislation only recognised heterosexual marriage and she could not certify a document which contradicted that legislation. The Protection Against Discrimination Commission and, on appeal, Sofia City Administrative Court dismissed the complaint on the ground that the public notary's refusal was not based on the complainant's sexual orientation but on Bulgarian law, which excluded same-sex marriage and therefore excluded the possibility for the certificate sought by the complainant being issued. Certificates of this kind (that there are no impediments to marriage in another country) were only issued by the authorities in accordance with the Family Code, under which only heterosexual marriage was recognised. This, and not the complainant's sexual orientation, was the basis for the impugned refusal. The Supreme Administrative Court confirmed this decision.

Race/ ethnicity

a. Access to education

Name of the court: Supreme Administrative Court

Date of decision: 6 July 2018

Name of the parties: PADC v. V.S. and V.T.

Reference number: Decision No. 9270 in case No. 1069/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/abea99687d46fecbc22582c100328f25?OpenDocument (in BG)

Brief summary: The equality body had initiated *ex officio* proceedings against a municipality mayor who backed school students' parents protesting against refugee children being enrolled in the local school. Allegedly, the mayor told protesting parents: 'Those are your children. Are you having them study with foreign children or are we defending our rights?' and 'Whatever decision you make, I'll abide by that'. His statements were televised. He also allegedly prevented refugee students from using the local school bus, resulting in them being bussed to school by the State Agency for Refugees. The PADC held that this constituted harassment on grounds of national origin and origin against an indeterminate number of people, as well as incitement to race discrimination. The PADC imposed a fine of BGN 250 (EUR 125), and an injunction to abstain from such statements.

On appeal, Sofia City Administrative Court (SCAC) repealed the decision. SCAC held that the mayor had directed his criticism against state authorities (for their allegedly impractical decision to enrol refugee children in the local school) and had not targeted the refugees themselves. The SAC, as a final instance, confirmed SCAC's decision.

b. Negative stereotyping

Name of the court: Supreme Administrative Court

Date of decision: 12 June 2018

Name of the parties: A.A. et al. v. M.T. and Ataka Political Party

Reference number: Decision No. 7863 in case No. 697/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/4db880c7a43a5ac7c22582a9004009e0?OpenDocument (in BG)

Brief summary: The complainants, Syrians residing in Bulgaria, alleged before the equality body that the respondent, an MP from the xenophobic Ataka party and a journalist by profession, who hosted a talk show on the party's television channel, had engaged in a series of hate propaganda broadcasts directed against Syrian asylum-seekers. The complainants alleged the respondent's hate speech amounted to harassment on grounds of national origin and religion, among other grounds, against them personally as Syrians and Muslims. The PADC dismissed their complaints, relying on the respondent being a politician and therefore entitled to discuss controversies in a partisan manner in order to

justify her statements. The PADC did find one of the complainants was discriminated against on grounds of 'personal status' as he was at the time an asylum seeker (whereas the rest of the complainants were residents). As the final instance, the SAC held that, because the respondent's impugned statements only concerned Syrians unlawfully crossing borders after 2013, the complainants were not personally affected as they had, all but two individuals, lawfully come to Bulgaria before 2013. They were, therefore, not complainants but third parties, regardless of their own assertion of personal infringement. As third parties, they did not have standing to appeal the PADC decision as only complainants had such standing.

Regarding the two complainants who had come to Bulgaria after 2013, who did have victim status, the SAC held the impugned statements did not infringe their rights, as the statements were not directed against Muslims in general but against 'Islamists'. Speech targeting 'Islamists' was not based on religion but on political grounds. Therefore, the targets of such speech could not claim protection from political speech opposing them on ideological grounds. The respondent had not incited discrimination within the meaning of the PADA. Her political statements were based on public facts, with sources on the Internet and, as a politician, she was entitled to voice her partisan position.

The complainant, regarding whom the PADC had found that, as an asylum-seeker, he was discriminated against on grounds of 'personal status' by means of the impugned statements, did not in fact have standing to appeal against this decision, claiming the proper grounds were race and religion, as the decision was not unfavourable to him regardless of the protected ground. As a result of the SAC's ruling, the respondent's statements whereby she termed Syrian asylum seekers in general 'cannibals', 'mass murderers' and 'Islamists', profusely using very harsh language, were legitimised.

c. Municipal services

Name of the court: Supreme Administrative Court

Date of decision: 13 November 2018

Name of the parties: T.P. v. Sofia Municipality

Reference number: Decision No. 13854 in case No. 12257/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/5570b8d1f5c0028dc2258342005fb270?OpenDocument (in BG)

Brief summary: The complainant, a resident of a predominantly Roma area, alleged before the PADC that the municipality had been omitting to carry out its duty (provided for under secondary legislation) to clean the space (collect waste) between residential blocks in the complainant's area. The respondent municipality defended itself by claiming that it carried out the same cleaning activities as in other residential areas but the residents of the area in question, predominantly Roma, disposed of waste at a rate the municipality was not able to keep up with, resulting in uncleanness in the affected space. The PADC found the municipality was not liable for any ethnic discrimination but still recommended that it duly carry out its cleaning duties. On appeal, Sofia City Administrative Court and, subsequently, the Supreme Administrative Court confirmed this decision.

Religion

Name of the court: Supreme Administrative Court

Date of decision: 2 April 2018

Name of the parties: SKAT TV OOD v. Jehovah's Witnesses in Bulgaria

Reference number: Decision No. 4238 in case No. 70/ 2017

Address of the webpage:

www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/d3437ee727533228c225825e003727f2?OpenDocument (in BG)

Brief summary: The case originated before the PADC. The complainant, the Jehovah's Witnesses (JWs), a registered denomination, alleged that the respondent, a company owning a xenophobic TV network, was liable for broadcasting incitement to discrimination and harassment against the JWs in a series of programmes containing hate speech against the religious group and scenes of religious-based violence against members of its organisation. The PADC found that the impugned broadcasts amounted to harassment on grounds of religion targeting all JW followers and imposed fines (BGN 1 200 (EUR 600) for each of the two individuals concerned and BGN 2 000 (EUR 1 000) for the legal person). On appeal, Burgas Administrative Court (BAC) upheld that decision. The SAC, as a final instance, confirmed BAC's decision, stressing that legal persons (such as the JWs) did have standing under the PADA. The SAC held the impugned broadcasts infringed media law bans on incitement to hatred and violence, as well as insults constituting hate speech within the meaning of the definition under Recommendation No. 20 of 1997 the Committee of Ministers of the Council of Europe (the only existing European definition of hate speech). The entire JW organisation was victimised. Confusingly, the court qualified the impugned conduct as both harassment and indirect discrimination; one of a number of examples in its case law of blurring conceptual lines when dealing with the various forms of discrimination.

A persistent trend in Roma litigation is action against hate speech – complaints and public interest motions by Roma individuals and activists supported by NGOs before the PADC and the courts alleging harassment and incitement to discrimination. While the courts' case law varies, the PADC generally takes an effective stance against hate speech.

Another persistent trend is litigation against collective forced evictions of Roma families from public areas and/or unlawful housing (in terms of planning and building requirements).

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: 31 December 2018

<p>Title of the law: Protection Against Discrimination Act Abbreviation: PADA Date of adoption: 16 September 2003 Latest relevant amendment: 19 January 2018 Entry into force: 1 January 2014 Web link: http://lex.bg/bg/laws/ldoc/2135472223 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 to which Bulgaria is a party Civil/administrative/criminal law: Civil/administrative Material scope: Universal Principal content: Prohibits direct and indirect discrimination, harassment, victimisation, incitement/instruction to discriminate, 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</p>
<p>Title of the law: Integration of People with Disabilities Act Abbreviation: IPDA Date of adoption: 2 September 2004 Latest relevant amendments: 20 July 2018 Entry into force: 1 January 2005. Repealed 18 December 2018 (in force as of 1 January 2019, after the cut-off date for this report) Web link: http://lex.bg/bg/laws/ldoc/2135491478 Grounds covered: disability Civil/administrative/criminal law: Civil/administrative Material scope: Universal Principal content: Prohibits direct and indirect discrimination; reasonable accommodation duties employment, education, infrastructure etc.; positive measures</p>
<p>Title of the law: Pre-School and School Education Act Abbreviation: PSEA Date of adoption: 13 October 2015 Latest relevant amendment: 29 December 2018 Entry into force: 1 August 2016 Web link: www.lex.bg/bg/laws/ldoc/2136641509 Grounds covered: Disability, age Civil/administrative/criminal law: Civil/administrative Material scope: Education Principal content: Integration and accommodation requirements</p>
<p>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 relevant amendment: 15 July 2011 Entry into force: 14 July 2009</p>

Web link: <http://lex.bg/bg/laws/ldoc/2135639181>

Grounds covered: Disability

Civil/administrative/criminal law: Administrative

Material scope: Services (urban architecture and infrastructure)

Principal content: Building accessibility requirements

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Bulgaria

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
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

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
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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