

## PRESENTATION

### **<sup>1</sup> Implementation Results of the Republic of Bulgaria in the Equal Opportunities Policy (working title)**

In September 2003 the Republic of Bulgaria has adopted an Act for Protection against Discrimination, effective as of January 01, 2004 (current version Act for Protection from Discrimination). The act covers all forms of discrimination.

Status of the Commission for Protection against Discrimination.

Transposed European Legislation

Pursuant to Recommendation No 2, adopted by the European Commission, a special, specific authority was established from fight and protection against discrimination – a Commission for Protection against Discrimination (CPD). Its legislative framework is especially outlined in the adopted act. The Commission is the authority, which coordinates, supervises and applies in practice the anti-discrimination regulations, control the application and compliance with the laws stipulating equal treatment. It is a legal person, financed by the budget and its seat is in Sofia. The legislative modification valid as of August 2006 outlined the restructuring of the Commission and envisaged the establishment of regional representatives. This necessity appeared as a result of the extended popularity of this authority and the more and more evident realization of its usefulness and the real support it provides to persons and groups of persons affected by discrimination. The Commission is an independent state authority. It is not part of the structure of the executive authorities, which is guarantee for impartial taking of decisions and impossibility to influence its impartiality. It presents an annual report before the National Assembly of the Republic of Bulgaria.

The Commission consists of 9 members: 5 of the members are appointed by the National Assembly, incl. the Chairman and the Deputy Chairman and the other four members are appointed by the President of the Republic of Bulgaria. The selection takes of the members into consideration the balanced participation of women and men and of persons belonging to ethnic minorities. There are five female representatives and four male representatives.

The Commission is a part, but not the most important unit of the Bulgarian national mechanism for fighting against discriminative treatment. Its strategic objective is to become part of the Community mechanism for prevention and fight with all forms of discrimination. In relation to this it should be noted that Bulgarian anti-discrimination law transposes all Directives of the European Community in the field of equality: Directive 2000/43 of June 29, 2000, Directive 2000/78 of November 27, 2000, Directive 2004/113 and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in the matters of employment and occupation, which shall be transposed in the internal legislation of the Member states up to August 18, 2008.

Directive 2006/54/EC unites the existing Directives in the field of the principle for equal treatment of genders by contributing to their development and adding new statements to them, which come of the practice of the Court of Justice of the European Communities. With a view to the *general tendency within the framework of EU for review of the various indicators of a specialized authority, Bulgaria has responded to those tendencies by creating a Commission for Protection against Discrimination in the middle of 2005. With the accumulated experience and qualified personnel, specialized to review cases of discrimination based on all indicators, stipulated in art. 4 of the Act for Protection from Discrimination, including the gender indicators, we may conclude that the CPD will continue to play a major role for the observance of the principle of equal treatment.*

In article 4 of the Act for Protection against Discrimination 19 indicators of discrimination are enlisted: gender, race, nationality, belonging to ethnical groups, human genome, citizenship, origin,

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<sup>11</sup> Presentations provided by you may be included on the TAIEX website and will be freely accessible to officials as well as the general public.

religion, belief, sexual orientation, marital status, property status or any other indicators stipulated by virtue of a law or international agreement under which the Republic of Bulgaria is a party.

In Bulgarian legislation there is an open option for other factors for discrimination, except the ones strictly indicated, in order to make it flexible and responsive to complicated situations with a view to the dynamic times in which we live and the accelerated migration processes both within the framework of the Community and on a worldwide level.

The Commission acts through its permanent compositions, appointed and specialized in compliance with certain features, as follows:

FIRST specialized composition based on ethnic and racial origin;

SECOND specialized composition based on gender, human genome and protection during labor performance;

THIRD specialized composition based on nationality, citizenship, origin, religion and belief;

FOURTH specialized composition based on education, belief, political belonging, personal and public status and property status;

FIFTH specialized composition based on disability, age, sexual orientation and family status;

AD HOC composition,, established for a particular case, not falling under the indicators stipulated for the other compositions;

An extended composition consisting of FIVE MEMBERS for cases of “multiple discrimination”, when there is an availability of more than one indicator;

The logic for appointing the compositions for the meetings is based on the presumption to make them capable of responding to all possible situations in life in the field of unequal treatment.

#### ADMINISTRATIVE CAPACITY OF THE CPD

The total number of employees of the CPD is 33 employees, distributed in three directorates: “Financial and Economic Activities and Property Management”; general administration, organized in directorate “specialized administration”, in which some experts are appointed, specialized in the field of equal treatment and discrimination. Those experts support the members of the members of the relevant compositions for solving of the specific cases for which the Commission has been informed. In order to make it adequate for the dynamic matter in the field of anti-discrimination, the qualifications of the administration shall be constantly improved by courses and seminars.

#### LEGAL OPTIONS FOR THE PERSONS AFFECTED BY DISCRIMINATION, IN COMPLIANCE WITH THE BULGARIAN LEGAL SYSTEM

According to the national legal system, the victim of discrimination has two options, which have been provided not cumulatively but in the form of alternatives:

1. It may choose to refer the refer the argument for out of court settlement before a Commission for Protection against Discrimination OR
2. To submit its claim to a court to be considered in compliance with the relevant court proceedings.
3. The decisions ruled by the Commission for Protection against Discrimination may be appealed before the SAC, i.e. in case that the party feels dissatisfied by the decision of the Commission, it may revise it/appeal it before a court.

The peculiarity of the national system for protection against discrimination lays in the fact that the victim of discrimination is entitled to choose between the Commission as an authority responsible for equality or the court and also to review the decisions of the Commission through the court system.

#### ACCTIVITIES AND COMPETENCIES OF THE COMISSION

The Commission for Protection against Discrimination has already existed for just a year and a half but for this short period it developed some good practices for its national system for prevention and fight against the discrimination practices and its participations in the European forums for exchange of the same.

1. During this period the Commission deployed a massive awareness campaign intended to introduce to the general public its competencies, with the rights of equal treatment of each member of society, both with the obligations of the subjects that may impose discriminatory practices. The awareness campaign aims, in addition to the popularization of the anti-discriminatory regulations also to make the citizens and the institution, the employers and the state administration of their rights and obligations under this and some other laws, the way these rights may be exercised in a way that guarantees equal opportunities for every member of society.
2. It is already an established practice to hold open some reception rooms and awareness seminars in the big district cities. This practice was also established as a result of the fact that the anti-discrimination legislation is not well known established as a result of monitoring of the local administration held. We sought partnership with them. Out of 264 municipalities 160 responded positively. The responsibilities imposed to the representatives of their administrations will be for coordination, cooperation with the Commission for changing of public attitude towards discrimination and its forms in spite of the indicator for unequal treatment.
3. Other forms of activities of the Commission are the seminars. The seminars are held with some major non-governmental organizations because without the participation of civil society there would not be any results for prevention of discrimination. Those are non-governmental organizations performing their activities in the field of people with disabilities, ethnical groups minority group issues working on the issues of women, sexual orientation, youth etc. The training seminars are held with mayors, school principals, representatives of the interior affairs authorities, district and municipal administrations. Training seminars on the application of the APD and its relation to other laws shall be conducted in cooperation with the "Institute of Justice" in the form of training of judges.
4. Another form are regular work meetings with organizations from the non-governmental sector, which are publicly represented.
5. The Commission performs regular monitoring of application and compliance with the anti-discrimination legislation through sociological thematic researches. The researches involve nationally represented sociological researches, comparative data from analogical researches held in some previous period which shall outline some tendencies and processes. The researches have resulted in finding out the availability of indirect discrimination, based on property status and concerning the access of groups having various material status to education, health care, and legal protection.

The researches indicate the availability of indirect significant intolerance to homosexuals and the probable reason for that attitude is the public perception of AIDS as the illness of homosexuals. Another serious problem, indicated by the sociological researches is the problem of Roma population. The very representatives of Roma population interpret their situation in society completely as a result of the attitude towards them. The research of discrimination based on gender in Bulgaria indicates that there is a significant difference between the situation of women in Bulgaria and women in Europe. The difference between the salaries received by *men* and by *women* is at a central European level. The professional realization of women is not hindered by sexual discrimination on behalf of employers. Ethical attitudes and ethnical discrimination. Bulgarian society is seriously threatened ethnic tension as a result of discriminatory attitude felt not in the relations "between the Bulgarians and the Turks", but as a result of the notion "Gypsies against everybody else". The basis of that feeling lays in the discrepancies between the standard of living and the attitude of lack of trust to the other ethnical groups to the gypsies. It cannot be said that in the country there is a clearly visible discrimination based on gender. The unemployment rates amongst women and men are practically equal. The unemployment rate for women is even lower than for men. The taking of higher in the hierarchy by women is not restricted on the basis of gender. The problem is not that women not have options for professional realization but rather that they have many obligations coming out of their roles of mothers and housewives.

Under Chapter Four, Section I of the CPD.

The Commission shall perform activities related to researches, collection of evidence, reconciliation, open sessions including summoning of the parties both (the victim and the violator) and making rulings. Pursuant to their entitlements the members of the Commission, which are appointed as reporters under the claim files submitted are entitled to collect evidence, to interrogate witnesses, the parties, to require information, which is protected by the law and which may only be used for the purposes of the investigation, to collect evidence by applying coercive measures as a result of a motivated request and granting of permission by the court and to impose fines stipulated by the law as well as financial penalties. The state and municipal institutions shall have the obligation to assist the Commission for finding solutions under the claim files submitted by it by providing the required information.

Only after the clarification of the case from a factual and legal point of view, the Chairman of the composition may give the parties the opportunity to review the materials under the claim file. Only after that some open sessions involving summoning of the parties may be held. During the first session the Chairman of the composition shall invite the parties under the claim file to reconcile. In case of lack of will for reconciliation some sessions in which the parties take part shall be held. The requirements, objections and explanations of the parties shall be heard, the witnesses and some experts shall be interrogated. After the complete clarification of the case the court shall be in recess until it reaches a decision. The decision shall be taken by simple majority by the members of the court composition by open voting and it shall be signed by them. A member of the composition who does not agree with the decision of the majority, shall sign the decision by concurring opinion which shall be motivated. By virtue of the decision taken, which shall be in written form, the court composition shall:

1. Establish the violation performed or that no violation has been performed and the claim shall not be honored;
2. Establishes the personalities of the violator and the victim;
3. Determines the type and scope of the penalty;
4. Applies the following compulsory administrative measures;
  - a) gives binding instructions to the employers and the officials for abatement of violations of legislation for prevention of discrimination;
  - b) shall seize some illegal decisions or orders of employers, which result in or may result in discrimination.
5. Prevents and stops the violation and reestablishes the initial state;
6. Approves of the agreement reached.

In case that a decision of the Commission is not implemented some fines and penalties shall be imposed, which shall be in the range from BGN 2000 to BGN 10 000 and in case of non-compliance with the decision continues for more than three months those amounts shall be made double.

#### MODIFICATIONS OF THE REGULATORY FRAMEWORK REGARDING DISCRIMINATION UNDER THE GENDER INDICATOR.

In 2006 by virtue of the act amending the APD, promulgated in State Gazette, issue 68/2006 Bulgarian legislation shall comply with the practice of the Court of Justice of the European Communities under Decisions C-409/95 and C-450/93, ruled respectively under the claims of Helmut Marshal and Ekhard Kalanke.

Following the amendment of art. 39 of the APD for encouraging the gender which is less represented in cases of job applications, when there are equal candidates some specific circumstances, which may result in appointing the candidate who from the gender group, which is better represented, shall also be taken into consideration and this shall not result in discrimination within the meaning of the law.

