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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

Margarita S. Ilieva

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EXECUTIVE SUMMARY

1. Introduction

The ruling party currently governs the country in coalition with a party that the European Commission against Racism and Intolerance (ECRI) has termed 'ultranationalist/fascist': 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; people of non-traditional faiths; LGBT people; Muslims; Turks; Jews; and Macedonians. Discrimination and hatred, including hate speech and hate crime, against the Roma is pervasive, radical and unsanctioned. High-ranking public officials engage in overt incitement to hatred and discrimination against the Roma, portraying them as subhuman. In such cases, the Prosecutor's Office, 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 as a result Bulgaria is under enhanced supervision by the Committee of Ministers of the Council of Europe. 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 disproportionately for prosecution and punishment. The ECtHR found Bulgaria liable in such a case.⁶ Roma are denied equal protection under the law, including from hate crime by officials and civilians. The ECtHR has found Bulgaria liable for a number of such cases.⁷ The legal system fails to protect Roma from political hate speech. As of 31 December 2020, proceedings in an emblematic anti-Roma hate speech case were pending before the ECtHR.⁸ They lack representation and have no access to decision-making at any level.

Jews, Muslims, those of 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 such a case.⁹ As of 31 December 2020, proceedings in an emblematic anti-Semitic hate speech case were pending before the ECtHR.¹⁰ Macedonians are denied

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

² European Commission against Racism and Intolerance (ECRI), *Report on Bulgaria*, 16 September 2014.

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

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

⁵ *Yordanova and Others v. Bulgaria*, No. 25446/06, 24 April 2012. (The case was represented by the author of this report.)

⁶ *Paraskeva Todorova v. Bulgaria*, No. 37193/07. 25 March 2010.

⁷ See, among other authorities: *Nachova and Others v. Bulgaria*, Nos. 43577/98 and [43579/98](#); *Anguelova and Iliev v. Bulgaria*, No. 55523/00.

⁸ *Budinova and Chaprazov v. Bulgaria*, No. 12567/13. At the cut-off date for this report, this case concerning facts dating from 2005 was pending before the ECtHR. The case was decided after the cut-off date, on 16 February 2021. The Court found violations of the right to non-discrimination and the right to private life. (The case was represented by the author of this report.) For analysis of the judgment, see M.S. Ilieva, 'The Rights of Others in Cases of Othering', *Strasbourg Observers*, April 2021.

⁹ *Karaahmed v. Bulgaria*, No. 30587/13, 24 February 2015. (The case was represented by the author of this report.)

¹⁰ *Behar and Gutman v. Bulgaria*, No. 29335/13. At the cut-off date for this report, this case concerning facts dating from 2005 was pending before the ECtHR. The case was decided after the cut-off date, on 16 February 2021. The Court found Bulgaria liable for unaddressed political anti-Semitic hate speech: violations of Articles 8 and 14 of the Convention. (The case was represented by the author of this report.) For analysis

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. ECtHR has found Bulgaria liable in several such cases.¹¹ 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.¹² LGBT people suffer from hate speech and hate crime, as well as discrimination.¹³

Equality case law is vibrant, albeit ridden with misconceptions and contradictions. Disability rights enjoy an especially favourable reception by adjudicators. In 2018, driven by communal mobilisation, three important disability rights laws were created – most notably, the People with Disabilities Act (PDA) (in force as of 1 January 2019). 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.¹⁴ 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 People with Disabilities Act (PDA),¹⁵ listing positive and reasonable accommodation duties in a number of fields. The PDA was adopted to secure rights under the Convention on the Rights of Persons with Disabilities (CRPD). Other laws, governing specific fields, such as education, employment and public procurement, provide for positive measures on grounds of disability and age.

Older abstract bans on discrimination exist in laws governing specific fields, as well as in the Constitution, but implementation is lacking. Bulgaria is bound by international instruments banning discrimination, including the European Convention on Human Rights (ECHR) (but not Protocol 12), the European Social Charter (Revised), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Race Discrimination, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. The Constitution and binding international law are directly applicable by domestic

of the judgment, see M.S. Ilieva, '[The Rights of Others in Cases of Othering](#)', *Strasbourg Observers*, April 2021.

¹¹ See, *inter alia*, the judgment in *United Macedonian Organisation Ilinden and Others v. Bulgaria* (No. 2), No. 34960/04, 18 October 2011.

¹² See, *inter alia*, Supreme Administrative Court (SAC), Decision No. 4177 of 13 April 2020 in Case No. 9533/2019; Decision No. 5473 of 11 May 2020 in Case No. 11868/2019.

¹³ More information is available in the ILGA-Europe [Annual Review 2021](#), p. 35.

¹⁴ Protection Against Discrimination Act (PADA) (*Закон за защита от дискриминация*), adopted September 2003, entered into force January 2004, last amended January 2018.

¹⁵ People with Disabilities Act (PDA) (*Закон за хората с увреждания*), adopted 18 December 2018, entered into force 1 January 2019.

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, 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 definition is unclear, with the 'suffer less favourable treatment' language causing adjudicators to confuse indirect discrimination with direct discrimination. Furthermore, this definition does not make it clear that hypothetical disparate impact ('would put' as per the directives' definitions) is covered.

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. The 'intent' element contravenes the directives. 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 members rather than three. The case law has failed to deal with the issues surrounding multiple discrimination.

The PADA defines racial segregation, and provides that it is a form of discrimination. However, it requires the separation to be 'compelled', in contravention of the directives' definition of direct discrimination. The PADA 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 PADA, children with disabilities are entitled to general support and to additional support in the pre-school and school education system. This support is a means to ensure for them conditions for equal access to quality education and to inclusion. The corresponding duty for educational institutions is an absolute one.

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 2020 effectively requiring intent. In cases concerning various grounds, the Supreme Administrative Court (SAC) and the Supreme Court of Cassation (SCC), as well as lower courts, have held that for discrimination to be found, different treatment had to be 'conscious'.¹⁶ In 2019, in a case where the lower court had found no discrimination as the treatment was not intentional, and the complainant had applied for cassation review, asking the SCC to address specifically the question of the relevance or otherwise of intent, the SCC declined to review the case without giving reasons.¹⁷

In 2020, the SAC (the final instance court for reviewing PADC decisions) held that extreme anti-Roma public statements by a Deputy Prime Minister did not constitute harassment as they did not target a specific individual.¹⁸ The SAC upheld the lower court's decision that the legislator had not intended to penalise 'abstract' verbal conduct directed against an 'unidentifiable circle of subjects, including when those belong to a particular race [...] religious, ethnic or other kind of social community'. The respondent 'had not intended negative consequences for a specific person or persons'. Furthermore, in another public Roma negative stereotyping case against a high-ranking official, where the complainant had not been personally targeted, the SAC confirmed the lower court's decision, which in turn had confirmed the PADC's decision that the impugned televised remarks by the Prosecutor General did not amount to harassment.¹⁹

In 2019, the SAC and the SCC (the final instance court for PADA civil court cases) had ruled similarly, in cases of anti-Roma hate speech, that all forms of discrimination required a specific victim.²⁰ The courts had held that a concrete hostile environment needed to have been created for an individual personally (workplace, etc.). This was on the claimant to prove. Specific impact could not be assumed based on the impugned content (even if found to be offensive) or its mediatization. No intent to harass could be established based on content.

¹⁶ See, *inter alia*, SAC, Decision No. 1253 of 27 January 2020 in Case No. 10834/2019 (ethnicity grounds), Decision No. 370 of 17 January 2020 in Case No. 5586/2019 (multiple grounds, including disability); Supreme Court of Cassation, Ruling No. 571 of 24 June 2020 in Case No. 37/2020 (age and other grounds).

¹⁷ Supreme Court of Cassation (SCC), Ruling No. 596 of 22 July 2019 in Case No. 680/2019. The case concerned a ground not protected under EU law – namely, the specific prison where a person was serving their sentence (alleged different treatment across prisons).

¹⁸ SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020.

¹⁹ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

²⁰ SCC, Decision No. 2 of 19 June 2019 in Case No. 3203/2018, Decision No. 819 of 29 November 2019 in Case No. 2596/2019; SAC, Decision No. 636 of 15 January 2019 in Case No. 7229/2018, SAC, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

Relevant to these decisions marked by anti-Roma bias, the emblematic general hate speech cases of *Behar* and *Budinova* against Bulgaria were pending before the ECtHR as of the cut-off date for this report.²¹ The domestic case law furthermore contradicts the *Firma Feryn* principle that wholesale discriminatory statements are outlawed regardless of whether an individual victim is identified. The problematic decisions have precedents prior to 2019. However, other decisions in 2019 and previously, including by the SAC and the SCC, have recognised PADA violations where categories of people and not specific individuals were targeted. The case law is inconsistent and arguably unreliable.

The case law is contradictory in terms of banning all discrimination, including such provided for under legal norms. On the one hand, in 2019, the SAC and the SCC jointly held that every administrative act, including a piece of secondary legislation, is unlawful if it is discriminatory, and a discriminatory administrative act gives rise to standing to claim protection before the administrative court, including for damages resulting from the said act.²² The SCC separately ruled that, to find discrimination, established inequality was relevant, regardless of whether it was according to legal norms, as the PADA aims at finding and imposing sanctions on all inequality.²³ However, in at least two other cases, the SAC held that the impugned treatment could not be discriminatory as it was based on the applicable law and other legal standards.²⁴ The 2020 case law has not resolved these issues.

Although not all problematic cases fall within the scope of the directives, a number of such cases do fall within that scope. Moreover, cases outside that scope are nevertheless capable of affecting cases within the scope, as the PADA is a comprehensive equality law governing all protected grounds and all fields in a coherent manner, by the same legal standards. Accordingly, judicial interpretation in certain cases regarding certain grounds/fields is relevant to all other grounds/fields.

The SAC has, problematically, held that 'hypothetical' unequal treatment is excluded from the concept of discrimination (where a company employee had stated to the complainant that he would be unequally treated if he applied).²⁵ In respect of a hypothetical comparator, the SAC has erred, holding that it must be established that a specific person has been treated more favourably.²⁶

In respect of identifying a proper comparator and ground, the SAC has reiterated its long-standing problematic case law:²⁷ in cases of dismissal based on employees or civil servants having become entitled to an old age and seniority pension, dismissed persons are compared with others with pension entitlements (as opposed to those without such entitlements, i.e. different age groups).²⁸ According to the SAC, dismissed individuals were not discriminated against on the ground of age because, under the law, the ground for their dismissal was not their age but their entitlement to a pension, and their entitlement to a pension was not based on age, as seniority was also taken into account. In line with its established flawed case law on this issue, the SAC starkly differentiated this criterion

²¹ See [Behar and Gutman](#) and [Budinova and Chaprazov](#). At the cut-off date for this report, these cases concerning facts dating from 2005 were pending before the ECtHR. The cases were decided after the cut-off date, on 16 February 2021. The Court found that the domestic courts had breached their positive duties to protect victims of general hate speech against ethnic minorities, which had targeted no specific individual. (The cases were represented by the author of this report.) For analysis of the judgments, see M.S. Ilieva, ['The Rights of Others in Cases of Othering'](#) *Strasbourg Observers*, April 2021.

²² SAC and SCC, joint Ruling No. 28 of 2 April 2019 in Case No. 5A/2019.

²³ SCC, Ruling No. 424 of 31 May 2019 in Case No. 919/2019.

²⁴ SAC, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 8325 of 4 June 2019 in Case No. 45/2019.

²⁵ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

²⁶ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

²⁷ 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 2.2 a).

²⁸ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

from age as a protected ground, and held that having acquired pension rights was not a protected ground under the PADA.²⁹ The SAC held that the concept of age as a protected ground under the PADA was different from the concept of age as an element of the entitlement to a pension related to age and length of service.³⁰ None of these rulings discussed proportionality or any other justification.

In respect of *causality - mixed reasons*, the SAC has repeatedly held that the reason for alleged unequal treatment must 'in all cases be a protected ground',³¹ or such treatment must 'be based solely and only' on a protected ground,³² arguably excluding cases where a protected ground was at play among other reasons. The Sofia City Administrative Court (SCAC) has copied that approach.³³ In one case, the SAC explicitly held that age was 'only one of a series of criteria', denying on this and other (equally problematic) bases that any discrimination had occurred.³⁴

However, in other 2019-2020 cases, the SAC has correctly stated that 'it is enough to establish that [a protected] ground constitutes a basic, meaningful reason for less favourable treatment'.³⁵

In respect of recognising discrimination *by perception*, in 2020, as in 2019, the courts have more often than not required *obiter* that a protected ground be actual (have 'an objective presence'), thereby excluding assumed ones.³⁶ In 2018, the SAC held that discrimination was not proven unless 'the objective fact of [a protected ground] was established'.³⁷

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.

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 have not respected this provision and have ordered parties to pay.

²⁹ SAC, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017.

³⁰ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

³¹ SAC, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

³² SAC, Decision No. 4815 of 24 April 2020 in Case No. 7948/2018.

³³ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019. Decision No. 8325 of 20 December 2019 in Case No. 11063/2019, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019.

³⁴ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

³⁵ SAC, Decision No. 3304 of 4 March 2020 in Case No. 7783/2019; Decision No. 5229 of 30 April 2020 in Case No. 12178/2018; Decision No. 8758 of 11 June 2019 in Case No. 1014/2019.

³⁶ See, *inter alia*, SCC, Ruling No. 41 of 25 January 2019 in Case No. 4570/2018; SAC, Decision No. 3304 of 4 March 2020 in Case No. 7783/2019, Decision No. 636 of 15 January 2019 in Case No. 7229/2018, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

³⁷ SAC, Decision No. 6151 of 11 May 2018 in Case No. 7203/2016.

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 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.

Statistical data 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 PADA, more employment quotas for people with disabilities are provided for. In terms of positive action for Roma, in 2020, the SAC struck down as discriminatory targeted scholarships for Roma students,³⁸ confirming the decision of the lower court.³⁹

According to SAC case law, 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.⁴⁰ 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. However, in the aforementioned case involving Roma scholarships, which the SAC struck down, the court disregarded its own case law in that respect and recognised the relevant

³⁸ SAC, Decision No. 458 of 13 January 2020 in Case No. 5375/2019.

³⁹ SCAC, Decision No. 7471 of 10 December 2018 in Case No. 9628/2018. For further information, please see section 5 – Positive action.

⁴⁰ 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. See also, among many other authorities from previous years, SAC, Ruling No. 14203 of 22 November 2017 in Case No. 11583/2017.

conservative association's right to appeal against the decision of the PADC, which had upheld the positive measures.

The case law has been inconsistent and unreliable as regards the competence of the administrative courts as opposed to the civil courts in anti-discrimination claims against public bodies.

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 'compelled'.⁴¹ The European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.⁴²
- The PADC does not use its powers, including its competence to start *ex officio* proceedings, in any strategic way, except for disability rights. It has no defined priorities and has failed to target structural issues, other than inaccessibility.
- 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).

⁴¹ PADA, Additional Provision, § 1(6).

⁴² For instance, *D.H. v. Czech Republic*, No. 57325/00, 13 November 2007; *Sampanis v. Greece*, No. 32526/05, 5 June 2008; *Oršuš v. Croatia* [GC], No. 15766/03, 16 March 2010.

INTRODUCTION

The national legal system

Bulgaria is a unitary state where the Constitution⁴³ 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)⁴⁴ 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.⁴⁵

The law on (equal) disability rights, the new People with Disabilities Act (PDA),⁴⁶ provides for accessibility, positive action and (reasonable) 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 and age.

List of main legislation transposing and implementing the directives

The Protection Against Discrimination Act,⁴⁷ 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,⁴⁸ property status or any other ground provided for by law or by international treaty to which Bulgaria is a party. Scope: universal.

People with Disabilities Act,⁴⁹ adopted 18 December 2018. Ground: disability. Scope: universal.

⁴³ Constitution (*Конституция*), adopted July 1991, last amended December 2015.

⁴⁴ PADA.

⁴⁵ 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).

⁴⁶ People with Disabilities Act (*Закон за хората с увреждания*), in force as of 1 January 2019, last amended December 2020.

⁴⁷ PADA.

⁴⁸ LGBT families would be protected under 'sexual orientation', as well as possibly under '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.

⁴⁹ PDA, adopted 18 December 2018, in force as of 1 January 2019.

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. This provision can be enforced against private individuals (and private legal persons) (as well as against 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 and implementing the directives (listed in the Introduction) 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).⁵⁰

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 also exist, 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.⁵¹ 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 *CHEZ* (Case C-83/14).

However, in 2019, in a case in which a local mayor had engaged in what was alleged to be hate speech against the residents of the local Roma neighbourhood, the SAC held that the protected ground of ethnicity was not established as it was not proven that the residential area in question was a predominantly Roma one, and even if that were to be considered a publicly known fact, the respondent in question had been referring not to the Roma but to the area as a whole, and not differentiating between residents on protected grounds.⁵² Therefore, no protected ground was established.

However, in 2020, the SAC has adopted decisions in line with the CJEU's interpretation of ethnicity as a protected ground in the context of predominantly (but not exclusively) Roma residential areas.⁵³

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'.⁵⁴ A 'religious community' is defined as a 'voluntary union of natural persons for purposes of manifestation of a certain religion and

⁵⁰ Mostly, the grounds overlap but some, such as sexual orientation and 'any other ground provided for by law or by international treaty to which Bulgaria is a party', are protected only under the PADA and not under the Constitution.

⁵¹ SAC, Decision No. 12620 of 18 October 2018 in Case No. 115/2018.

⁵² SAC, Decision No. 14026 of 21 October 2018 in Case No. 12163/2018.

⁵³ SAC, Decision No. 13045 of 21 October 2020 in Case No. 4671/2020, Decision No. 5647 of 15 May 2020 in Case No. 4334/2019.

⁵⁴ Religious Denominations Act (RDA) (*Закон за вероизповеданията*), adopted December 2002, last amended May 2020, Additional Provisions, § 1(1).

performance of worship, religious rituals and ceremonies’.⁵⁵ 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’.⁵⁶ 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.⁵⁷ 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.

c) Disability

The PADA does not define disability. The PDA defines ‘people with disabilities’ and ‘people with long-term disabilities’, and those definitions are applicable to the PADA across fields and forms of discrimination. Under the PDA, Additional Provisions, § 1(1), people with disabilities are ‘persons with physical, mental, intellectual and sensory impairment which in interaction with their environment may hinder their full and effective participation in society’. Furthermore, under the PDA, Additional Provisions, § 1(2), people with long-term disabilities are ‘persons with long-term physical, mental, intellectual and sensory insufficiency which in interaction with their environment may hinder their full and effective participation in society, and whom the medical expertise authorities have certified with a type and degree of disability of 50 % and above 50 %’.

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, it is expected that disability will be proven by a medical certificate. In 2020, the SAC continued its previous approach of consistently relying on medical certificates when discussing whether the fact of disability was established in a discrimination case.⁵⁸ In 2019, an appeals court explicitly held that the burden was on the appellant to prove that he was a person with a disability by producing a medical certificate.⁵⁹

In 2020, the SAC referred to the CJEU case law when discussing the concept of disability – in particular case C-13/05 (*Chacón Navas*, which has been de facto overruled in the *Ring and Skouboe Werge* case).⁶⁰ In this manner, the Court invoked a judgment that is no longer a good authority in terms of the CJEU definition of disability. In another case, the SAC made a distinction between disability and sickness, reasoning that the latter indicated a temporary inability to perform one’s usual activities, while the former referred to a long-term, or even irreversible, condition.⁶¹ In yet another case, the SAC referred to the CRPD and stated that it adopted an expansive construction of the concept of disability, which it said was in line with ECtHR case law.⁶² The Court clarified that, while sickness and disability differed, in the case in question, the consequences of the sickness in terms of sensory insufficiency amounted to a bar to effective participation by the affected individual. Under the CRPD, the Court reasoned, degrees of insufficiency were not relevant. It was enough that a person’s participation was hampered at a certain time, or that such hampering was a probability for that person as opposed to others. In sum, a sickness could qualify as a disability in Bulgaria.

⁵⁵ RDA, Additional Provisions, § 1(2).

⁵⁶ RDA, Additional Provisions, § 1(3).

⁵⁷ SAC, Decision No. 4238 of 2 April 2018 in Case No. 70/2017.

⁵⁸ For instance, SAC, Decision No. 1632 of 31 January 2020 in Case No. 10422/2018, Decision No. 9865 of 20 July 2020 in Case No. 13536/2019, Decision No. 896 of 21 January 2020 in Case No. 1934/2019, 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.

⁵⁹ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

⁶⁰ SAC, Decision No. 12380 of 7 October 2020 in Case No. 6616/2020.

⁶¹ SAC, Decision No. 9387 of 13 July 2020 in Case No. 14464/2020.

⁶² SAC, Decision No. 896 of 21 January 2020 in Case No. 1934/2019.

In 2020, as in previous years, the SAC relied on (now-repealed) IPDA definitions, alongside new PDA definitions, as well as CRPD definitions, for the purposes of PADA cases.⁶³

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 PDA. Under the PADA, equality rights are the same for disability and 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. A medical certificate is an expert decision handed down by the relevant Territorial Expert Physicians' Commission, which officially assesses people in terms of long-term reduced working ability (type and degree of disability). In terms of societal impact, the court would hear (expert) witnesses and gather other evidence as it saw fit.

The PDA 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, regardless of whether it is long-term or not. However, as per the established case law, litigants are expected to prove their disability by means of medical documents. In practice, this has not posed barriers to access to justice, as people with disabilities possess such certificates as a matter of course. Those allow them to access the system of disability-related benefits.

Other legislation, outside the field of non-discrimination, also includes disability-related definitions. In the Automobile Transport Act,⁶⁴ 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,⁶⁵ 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(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'.⁶⁶ In the Ordinance on Inclusive Education issued under the PSEA, there is a definition of 'communication impairments'.⁶⁷

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.⁶⁸ 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.⁶⁹ Another piece of

⁶³ For instance, SAC, Decision No. 896 of 21 January 2020 in Case No. 1934/2019.

⁶⁴ Automobile Transportation Act (*Закон за автомобилните превози*), adopted September 1999, last amended 22 December 2020.

⁶⁵ Rail Transport Act (*Закон за железопътния транспорт*), adopted November 2000, last amended 8 September 2020.

⁶⁶ Pre-School and School Education Act (*Закон за предучилищното и училищното образование*), entry into force 1 August 2016, last amended 18 September 2020, Additional Provisions, § 1(33) and § 1(31).

⁶⁷ Ordinance on Inclusive Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended 27 October 2020, Additional Provisions, § 1(2).

⁶⁸ 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, last amended July 2011), Additional Provisions, § 1(1). This ordinance applies universally in respect of architectural and infrastructural accessibility.

⁶⁹ Ordinance No. 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).

secondary legislation defines 'persons of reduced mobility' as including people with disabilities within the meaning of the PDA, among others.⁷⁰ A further piece of secondary legislation defines 'a person of 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'.⁷¹

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 PDA definitions.

d) Age

National legislation does not define age. The Employment Promotion Act (EPA),⁷² Additional Provisions, § 1(4a) defines 'groups of unequal status on the labour market', using age as a component, along with other protected grounds.⁷³ 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.⁷⁴ The EPA, Additional Provisions, § 1(18) also defines 'adult', which is applicable to positive measures in the EPA.⁷⁵

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).⁷⁶ 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. Indirect age discrimination was not considered.

In 2019-2020, the SAC similarly held that dismissed individuals were not discriminated against on the ground of age because, under the law, the ground for their dismissal was not their age but their entitlement to a pension, and their entitlement to a pension was not based on age, as seniority was also taken into account. In line with its established flawed case law on this issue, the SAC starkly differentiated this criterion from age as a protected ground, and held that having acquired pension rights was not a protected ground under

⁷⁰ 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, last amended 24 January 2020, Additional Provision § 1 (22). This ordinance applies to passenger ships.

⁷¹ 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).

⁷² Employment Promotion Act (*Закон за насърчаване на заетостта*), adopted December 2001, entry into force January 2002, last amended 13 March 2020.

⁷³ "Groups of unequal status on the labour market" shall be groups of unemployed persons of lower competitiveness on the labour market, including: unemployed youth; unemployed youth with permanent disabilities; unemployed youth using social or integrated health-social services residential care who have completed their education; [...] unemployed persons older than 50 years; [...]."

⁷⁴ PADA, Article 7(1.9).

⁷⁵ "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'.

⁷⁶ 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.

the PADA.⁷⁷ The SAC held that the concept of age as a protected ground under the PADA was different from the concept of age as an element of the entitlement to a pension based on age and length of service.⁷⁸ Indirect age discrimination was not considered. The SAC has demonstrated a protective stance towards pension-related limitations on employee rights.

As Bulgaria has a continental legal system, and not one based on legal precedent, these problematic rulings do not determine the law or automatically preclude legal redress in other cases. Therefore, mixed-grounds cases are still litigable under the law; potentially successfully before other courts or judges. Still, the SAC's case law is, as a matter of course, influential on lower administrative courts, and the SAC has the final word on appeal. That said, different benches within the SAC have been on record to achieve different outcomes in similar cases throughout the evolution of the case law under the PADA.

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/length of service). Multiple discrimination cases are undisputedly litigable.

e) Sexual orientation

Sexual orientation is defined in the PADA, Additional Provisions, § 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 a certificate of no impediment to marriage by a notary public on the grounds of domestic legislation not recognising same-sex marriage was not made on the grounds of sexual orientation.⁷⁹ The notary public had refused to issue a no-impediment certificate for the purpose of same-sex marriage in another country, stating that there was no legal basis for such a certificate to be issued as domestic legislation recognised no such marriage.

2.1.2 Multiple discrimination

In Bulgaria, multiple discrimination is prohibited by law. The PADA defines multiple discrimination as 'discrimination based on more than one [protected] ground'.⁸⁰ The PADA places a statutory duty on public authorities to give priority to positive measures for the benefit of multiple discrimination victims.⁸¹ The PADC hears multiple discrimination cases sitting with an extended panel of five members (rather than three).⁸² 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 Bulgaria, there is no case law effectively 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 courts, and sometimes multiple discrimination has been found, their rulings have discussed none of the conceptual or evidentiary implications of a

⁷⁷ SAC, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017.

⁷⁸ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

⁷⁹ SAC, Decision No. 12113 of 10 October 2018 in Case No. 5381/2017.

⁸⁰ PADA, Additional Provisions, § 1(11).

⁸¹ 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.

⁸² PADA, Article 48(3).

plurality of grounds. In 2020, the Sofia City Court treated a multiple discrimination case (harassment on grounds of ethnicity and sexual orientation) as a case of two distinct claims – one for harassment based on sexual orientation and one for harassment based on ethnicity.⁸³ Accordingly, it awarded separate, different amounts for each ground of harassment, while the impugned remarks had jointly referred to both protected grounds. This meant that the total amount awarded was higher than it would have been if harassment was on one ground only. The Court did not consider one form of harassment more serious than the other in terms of the affected grounds. The relevant factor for the difference in the awards was the incidence, as well as other aspects of the relevant circumstances – homophobic comments had been made on one occasion, in the target's place of study, while anti-Roma comments had been made twice, including on national TV and in the proceedings before the PADC. The Court calculated the separate awards of damages based on the principle governing non-pecuniary compensation under domestic law – 'as per fairness'.

The Court did not discuss whether the facts warranted treating the discrimination at hand as additive (composite) or as intersectional. It did not mention any such possible categories, or indeed discuss the concept of multiple discrimination as such in any way.

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 [...]'.⁸⁴ Therefore, discrimination on perceived or assumed grounds is explicitly prohibited. However, more often than not, in 2020, as in previous years, in various unrelated factual contexts, the courts have required *obiter* that a protected ground be actual, thereby excluding assumed ones (protected grounds are always present in a particular individual;⁸⁵ a claimant must allege having a protected ground which was the reason for their unequal treatment);⁸⁶ a person subjected to harassment must be a bearer of a protected ground;⁸⁷ proving discrimination requires the undisputed (proven) presence of a protected ground as a reason for it; a protected ground must be at hand.⁸⁸

In 2018, in one case, the SAC posed an actual rather than an *obiter* requirement that the protected characteristic be real regardless of any perception of it. The Court 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'.⁸⁹ In other words, the SAC implicitly required the complainant to prove that he was 'objectively' gay, thereby excluding the potential for discrimination by perception. In 2017, the SAC had ruled *obiter* that, 'not every unfavourable treatment represents discrimination, but only that which is inflicted because of the objective presence of protected grounds',⁹⁰ thereby ruling out

⁸³ Sofia City Court, Decision No. 828 of 30 January 2020 in Case No. 751/ 2019.

⁸⁴ PADA, Additional Provisions, § 1(8).

⁸⁵ See, *inter alia*, SAC, Decision No. 896 of 21 January 2020 in Case No. 1934/2019, Decision No. 3304 of 4 March 2020 in Case No. 7783/2019.

⁸⁶ SCC, Ruling No. 41 of 25 January 2019 in Case No. 4570/2018 (an alleged employment discrimination case in which the claimant failed to state any protected ground).

⁸⁷ SAC, Decision No. 636 of 15 January 2019 in Case No. 7229/2018, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018 (an anti-Roma hate speech Case in which the claimant was not personally targeted).

⁸⁸ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016 (a police officer dismissal case in which the complainant alleged that he was discriminated against on grounds of 'personal status' – having been convicted of a crime).

⁸⁹ SAC, Decision No. 6151 of 11 May 2018 in Case No. 7203/2016.

⁹⁰ SAC, Decision No. 7174 of 8 June 2017 in Case No. 3469/2016.

discrimination by perception. There has been no response to this case law in terms of demands for legislative reform (no reform of the legislation as such being needed).

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 with the person discriminated against*, where this association is a cause of the discrimination'.⁹¹ Therefore, discrimination by association, including presumed association, is explicitly banned. In 2020, the SAC failed to correct the flawed reasoning in a decision by the PADC, which had found that the parents of a child who had allegedly been discriminated against were thereby also discriminated against because they were associated with their child.⁹² In this case, the PADC had erroneously decided that the parents were discriminated against simply because their child was discriminated against – not because the parents themselves were treated less favourably. In another case, however, the SAC correctly referred to *Coleman*, differentiating between discrimination against a parent due to their association with their child, and discrimination against their child.⁹³ In addition, in 2019, the SAC explicitly held, invoking *Coleman*, that non-discrimination protection included a ban on unequal treatment of persons associated with a person who is a bearer of a protected ground (but to claim protection, they had to have suffered discrimination personally). In 2019, the SAC recognised that the parents of a child with a disability had standing to seek protection against discrimination as persons associated with their child.⁹⁴ The case law is, overall, in line with the judgment in Case C-303/06.

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)). 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).⁹⁵ 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).

In 2020, the Sofia City Administrative Court held that a finding of discrimination was inconsistent with the employer having exercised a right of theirs provided under a different law (not the PADA) vis-à-vis an employee.⁹⁶ In other words, according to the Court in this case, a discretionary power of the employer's is not subject to scrutiny from a discrimination standpoint. This fallacious ruling does not represent established case law,

⁹¹ PADA, Additional Provisions, § 1(8).

⁹² SAC, Decision No. 1236 of 24 February 2020 in Case No. 1701/2019.

⁹³ SAC, Decision No. 8769 of 3 July 2020 in Case No. 1322/2020.

⁹⁴ SAC, Decision No. 12023 of 26 August 2019 in Case No. 4599/2018.

⁹⁵ Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, C-83/14, EU:C:2015:480.

⁹⁶ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019.

but it has had sporadic forerunners over the years.

In terms of identifying the relevant protected ground on which impugned treatment was based, the SAC held that a complainant before the PADC was, in principle, entitled to amend their statements as to which protected ground the alleged discrimination was based on.⁹⁷ Equally, the PADC was *ex officio* competent to identify the relevant protected ground, having established the facts. The SCC held that identifying the relevant protected ground was a matter of proving a discrimination case, i.e. on the merits, rather than a question of admissibility.⁹⁸ Therefore, it was sufficient for a claimant to initially state facts indicating discrimination based on a protected ground.

In respect of identifying a proper comparator and ground, the SAC has reiterated its long-standing problematic case law:⁹⁹ in cases of dismissal based on employees or civil servants having become entitled to an old age and seniority pension, dismissed persons are compared with others with pension entitlements (as opposed to those without such entitlements, i.e. different age groups).¹⁰⁰ According to the SAC, dismissed individuals were not discriminated against on the ground of age because, under the law, the ground for their dismissal was not their age but their entitlement to a pension, and their entitlement to a pension was not based on age, as seniority was also taken into account. In line with this established flawed case law on this issue, the SAC starkly differentiated this criterion from age as a protected ground, and held that having acquired pension rights was not a protected ground under the PADA.¹⁰¹ The SAC held that the concept of age as a protected ground under the PADA was different from the concept of age as an element of the entitlement to a pension related to age and length of service.¹⁰² None of these rulings discussed proportionality or any other justification.

Recognising the concept of a hypothetical comparator, the SAC held that a comparator was not required to be actual.¹⁰³ However, in 2019, the Court problematically held that it had to be established that a specific person has been treated more favourably,¹⁰⁴ and that discrimination was not proven as no such persons for comparison were established.¹⁰⁵

In 2019, the SAC problematically held that hypothetical unequal treatment was excluded, denying protection to a person who claimed that he would be refused (on age grounds) a banking service on equal terms based on a bank employee statement to that effect.¹⁰⁶

In respect of *causality - mixed reasons* (where a protected ground played a part along with other factors), the case law is contradictory. On the one hand, the SAC has fallaciously held that the reason for alleged unequal treatment must 'in all cases be a protected ground',¹⁰⁷ or such treatment must 'be based solely and only' on a protected ground,¹⁰⁸ arguably excluding cases where a protected ground was one among several reasons. The Sofia City Administrative Court (SCAC) has copied that approach.¹⁰⁹ In one case, the SAC explicitly held that age was 'only one of a series of criteria', denying on this and other

⁹⁷ SAC, Decision No. 5023 of 26 August 2020 in Case No. 4599/2018.

⁹⁸ SCC, Ruling No. 43 of 28 April 2020 in Case No. 13911/2019.

⁹⁹ 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.

¹⁰⁰ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

¹⁰¹ SAC, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017.

¹⁰² SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

¹⁰³ SAC, Decision No. 164 of 7 January 2020 in Case No. 15327/2018.

¹⁰⁴ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

¹⁰⁵ SAC, Decision No. 15498 of 14 November 2019 in Case No. 3959/2018.

¹⁰⁶ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

¹⁰⁷ SAC, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

¹⁰⁸ SAC, Decision No. 4815 of 24 April 2020 in Case No. 7948/2018.

¹⁰⁹ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019, Decision No. 8325 of 20 December 2019 in Case No. 11063/2019, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019.

(equally problematic) bases that any discrimination had occurred.¹¹⁰ However, in other cases, the SAC has correctly stated that 'it is enough to establish that [a protected] ground constitutes a basic, meaningful reason for less favourable treatment'.¹¹¹

In respect of recognising that no intent is required, the SAC and other courts have not been able to comply with the directives, which do not require any intent to be established. The case law is contradictory with regard to intent, with several decisions in 2020 (and earlier) effectively requiring intent. In cases concerning various grounds, the SAC and the Supreme Court of Cassation (SCC), as well as lower courts, have held that for discrimination to be found, different treatment had to be 'conscious'.¹¹² Importantly, in a case where the lower court had found no discrimination as the treatment was not intentional, and the complainant had applied for cassation review, asking the SCC to address specifically the question of the relevance or otherwise of intent, the SCC declined to review the case without giving reasons.¹¹³ In certain cases, the SAC found no discrimination as, *inter alia*, the treatment was not proven to be 'conscious'.¹¹⁴ There are no certain types of cases or grounds in regard to which the courts tend to require that intent be shown. There is no trend in that regard.

The SAC has referred *obiter* to a definition of discrimination that does not correspond to the directives: 'By definition, the concept of discrimination is inequality and humiliation [based on protected grounds], which is established by law; an appointing of lesser rights [...]'.¹¹⁵ The Sofia City Court (SCtC) has done something similar: 'By definition, discrimination is unfair (less favourable) treatment (inequality, humiliation [...]) of one or more members of a specified group as compared to other people according to specified criteria (protected grounds). [...] difference, exclusion, limitation or preference on grounds provided for by the law, which is aimed at or results in destroying or impairing equality of treatment'.¹¹⁶

In some cases, the SAC has erroneously discussed less favourable (different) treatment as an instance of indirect, rather than direct, discrimination.¹¹⁷

b) Justification for direct discrimination

The PADA does not permit a general justification for direct discrimination with respect to any ground.¹¹⁸ It only provides for an exhaustive list of specific exceptions for various protected grounds, including the six EU grounds.¹¹⁹

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. The Sofia City Administrative Court held that, for discriminatory less favourable treatment to be

¹¹⁰ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

¹¹¹ SAC, Decision No. 3304 of 4 March 2020 in Case No. 7783/2019, Decision No. 5229 of 30 April 2020 in Case No. 12178/2018, Decision No. 8758 of 11 June 2019 in Case No. 1014/2019.

¹¹² See, *inter alia*, SAC, Decision No. 1253 of 27 January 2020 in Case No. 10834/2019 (ethnicity grounds), Decision No. 370 of 17 January 2020 in Case No. 5586/2019 (multiple grounds, including disability). Supreme Court of Cassation, Ruling No. 571 of 24 June 2020 in Case No. 37/2020 (age and other grounds).

¹¹³ Supreme Court of Cassation (SCC), Ruling No. 596 of 22 July 2019 in Case No. 680/2019. The case concerned a ground not protected under EU law – namely, the specific prison where a person was serving their sentence (alleged different treatment across prisons).

¹¹⁴ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017.

¹¹⁵ SAC, Decision No. 3208 of 28 February 2020 in Case No. 847/2019.

¹¹⁶ SCtC, Decision No. 261593 of 2 December 2020 in Case No. 12501/2019.

¹¹⁷ SAC, Decision N. 5609 of 14 May 2020 in Case No. 5057/2019, Decision N. 10495 of 30 July 2020 in Case No. 5792/2020.

¹¹⁸ 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.

¹¹⁹ PADA, Article 7.

established, such treatment had to not be objectively justified by a legitimate aim pursued by appropriate and necessary means (as well as based exclusively on a protected ground).¹²⁰

Applying a flawed medical approach to disability, the SAC effectively justified a dismissal directly based on disability with the opinions of medical persons and authorities, which had held that the complainant was unable to continue performing her job due to her disability; the relevant trade union, which the employer had consulted in this case, had also formally opined that the dismissal was in the interests of the complainant's health.¹²¹

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). It is defined. Article 4(3) of the PADA 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 *CHEZ* (Case C-83/14). 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.

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. The SCC failed to correct a ruling by the lower court to the effect that indirect discrimination required protected grounds to be the reason for the disadvantage.¹²² The SAC erroneously discussed a situation of arguable indirect discrimination (food provided to all inmates in a prison that did not correspond to the dietary needs of Muslims) as an instance of unproven direct discrimination, and as a result, upheld the lower court's decision, which had repealed the PADC's decision finding indirect discrimination.¹²³ The SAC furthermore held that less favourable treatment provided for under legislation constituted indirect discrimination; the legislative norm providing for different treatment was an apparently neutral one, according to the Court.¹²⁴ Accordingly, the SAC applied to this instance of different treatment the justification only relevant to indirect discrimination (legitimate aim and necessity). The SAC made a similar erroneous decision in 2019, holding that less favourable treatment provided for under secondary legislation amounted to indirect discrimination because it was envisaged by norms, and not perpetrated by any specific actor.¹²⁵

In other cases, however, the SAC ruled correctly that indirect discrimination implied application of the same rule resulting in disparate impact/different situations based on protected grounds.¹²⁶ In 2019, the SAC similarly construed indirect discrimination in line

¹²⁰ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019.

¹²¹ SAC, Decision No. 1644 of 31 January 2020 in Case No. 6992/2019.

¹²² SCC, Ruling No. 595 of 22 July 2019 in Case No. 109/2019.

¹²³ SAC, Decision No. 4983 of 28 April 2020 in Case No. 13721/2019.

¹²⁴ SAC, Decision No. 10495 of 30 July 2020 in Case No. 5792/2020.

¹²⁵ SAC, Decision No. 15498 of 14 November 2019 in Case No. 3959/2018.

¹²⁶ SAC, Decision No. 5280 of 4 May 2020 in Case No. 8855/2019, Decision No. 2711 of 25 February 2019 in Case No. 5704/2017.

with the standards: '[I]ndirect discrimination is not treatment based on protected grounds. Conversely, [it] is treatment, which universally applies to all regardless of their characteristics but which, implemented in practice, impacts some worse than others, and disproportionately affected are groups characterised by protected grounds. Indirect discrimination is a result of the same treatment of persons in different situations. Such discrimination is indirect because it is not treatment that is different but the consequences of it. The consequences of such treatment feel differently to persons with different characteristics.'¹²⁷ Similarly, the Varna Regional Court (VRC) has correctly interpreted indirect discrimination in terms of its difference from direct discrimination.¹²⁸

In 2020, the SCC held, also correctly, that an authority's requirements for access to an administrative service (application in person rather than through a representative), which applied to all but placed people with disabilities at a particular disadvantage, amounted to indirect discrimination.¹²⁹ The SCC upheld the decision of the lower court, which had correctly reasoned as to the nature of indirect discrimination. In 2019, the SAC correctly held, in a similar case, that a person with a disability had been discriminated against as residence requirements were applied to him without taking into account the disability-related difficulties that he faced in complying, in comparison with non-specified others who were able to comply because they had no such difficulties/disability (hypothetical comparator).¹³⁰

In contrast, in a comparable accessibility case in 2019, the SAC erred in respect of identifying the proper comparator group when it held that a person with a disability was not discriminated against in relation to the inaccessibility of an element of railway station infrastructure, as he was not put at a disadvantage in comparison with others with mobility issues (instead of comparing his position with that of people with no mobility issues).¹³¹

To recapitulate, the case law still struggles with contradictions.

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'. Although a number of indirect discrimination cases have now been decided, the case law has not as yet 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.

However, in decisions rendered in respect of implementation of the CJEU's *CHEZ* decision, the SAC did discuss the availability or otherwise of alternative means of pursuing a legitimate aim as a consideration in a possible justification analysis.¹³²

¹²⁷ SAC, Decision No. 17362 of 18 December 2019 in Case No. 3542/2019. This language, while not crediting the source, is copied from a book by the author of this report, an explanatory work addressed to the judiciary, analysing the concepts under the PADA.

¹²⁸ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019. This language, while not crediting the source, is copied from a book by the author of this report, an explanatory work addressed to the judiciary, analysing the concepts under the PADA.

¹²⁹ SCC, Ruling No. 394 of 8 May 2020 in Case No. 1094/2020.

¹³⁰ SAC, Decision No. 3547 of 12 March 2019 in Case No. 10671/2017.

¹³¹ SAC, Decision No. 8325 of 4 June 2019 in Case No. 45/2019.

¹³² SAC, Decision No. 13045 of 21 October 2020 in Case No. 4671/2020, Decision No. 5647 of 15 May 2020 in Case No. 4334/2019.

In 2019, a lower court also correctly defined the necessity test as follows: '[D]isproportionate adverse effect on the claimant [who is blind] may only be justified when the [legitimate] aim cannot be achieved by other means. [T]he adverse effect of the rule [...] results from its insensitivity to an objectively existing situation, which excludes a possibility to treat all [persons] the same as they are objectively not in the same position. Therefore, the court finds that there is no proportionality between the aim pursued [personal data protection] and the means used [a requirement to submit an application in person]. It is not established that only by means of such a requirement the legitimate aim can be realised and there is no means less interfering with people's rights to pursue that aim'.¹³³

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,¹³⁴ the Protection of Personal Data Act,¹³⁵ the Census 2021 Act,¹³⁶ the People with Disabilities Act,¹³⁷ the Ministry of the Interior Act,¹³⁸ the Bulgarian Personal Documents Act,¹³⁹ the Ordinance on the Terms and Procedure to Conclude, Implement and Terminate the Agreement for Integration of Foreigners Granted Asylum (Refugees) or Subsidiary Protection,¹⁴⁰ and the Ordinance on Integrative Education.¹⁴¹ 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 (there has been no movement to include sexual orientation);¹⁴² personal life; human genome; unlawful acts committed; nationality; sex; age; education; language.¹⁴³

¹³³ Varna Regional Court, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019. This language, while not crediting the source, is copied *mutatis mutandis* from a book by the author of this report, an explanatory work addressed to the judiciary, analysing the concepts under the PADA.

¹³⁴ Statistics Act (*Закон за статистиката*), adopted June 1999, last amended 24 April 2020, Article 21.

¹³⁵ Protection of Personal Data Act (*Закон за защита на личните данни*), adopted January 2002, last amended 25 November 2019, Article 1(3-5).

¹³⁶ Census 2021 Act (*Закон за преброяване на населението и жилищния фонд в България през 2021 г.*), adopted 21 February 2019, last amended 22 December 2020, Article 17 (1.17-19) (1.26).

¹³⁷ PDA, Article 82.

¹³⁸ Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), adopted June 2014, last amended 2 October 2020, Article 10(2), Articles 25-26.

¹³⁹ Bulgarian Personal Documents Act (*Закон за българските лични документи*), adopted August 1998, last amended 27 November 2020, Articles 18 and 65.

¹⁴⁰ See Council of Ministers, Decree No. 144 of 19 July 2017 for the Adoption of Ordinance [...], Articles 12(1) and (3) and Article 15(1), available at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=116399>.

¹⁴¹ Ordinance on Integrative Education, Article 145(2) – concerning pupils with special educational needs.

¹⁴² 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.

¹⁴³ Respectively, Statistics Act, Article 21(2) (provision of data not mandatory); Protection of Personal Data Act, Article 51; Census 2021 Act, Article 17(1); 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).

This is considered sensitive data. Under the Protection of Personal Data Act, personal data regarding racial or ethnic origin, religious beliefs, health status or sexual life, *inter alia* (excluding age), may be processed only when this is absolutely necessary, where there are appropriate safeguards for the rights and freedoms of the data subject, and where this is provided for under EU law or the legislation of Bulgaria.¹⁴⁴ When the processing of such data is not provided for under EU law or the legislation of Bulgaria, it may be done only when this is absolutely necessary, where there are appropriate safeguards for the rights and freedoms of the data subject, and where a) the aim is to protect vital interests of the data subject or another natural person, or b) the data concerned were obviously made public knowledge by the data subject.¹⁴⁵ When such data are processed, appropriate measures and safeguards shall be applied to prevent discrimination against natural persons.¹⁴⁶

No law provides for the collection of ground-disaggregated data explicitly for purposes of equality litigation or policies. Public bodies taking positive measures do use statistics to design such measures.¹⁴⁷ Statistics are collected either by the National Statistical Institute, a public institution governed under the Statistics Act, or by public authorities themselves or by private research agencies on commission.¹⁴⁸

In Bulgaria, statistical evidence may be admitted by national law in order to establish indirect discrimination. National law implicitly permits any type of evidence in civil cases, including statistical evidence.¹⁴⁹ 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.¹⁵⁰

b) Practice

In Bulgaria, statistical evidence has been used in practice in order to establish indirect (and other forms of) discrimination. 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.¹⁵¹

In 2018, the SAC found that there was discrimination against a category of patients who were denied publicly funded treatment, in contrast with another category of patients, by relying on statistical data presented by an expert who compared two categories of patients

¹⁴⁴ Protection of Personal Data Act, Article 51(1).

¹⁴⁵ Protection of Personal Data Act, Article 51(2).

¹⁴⁶ Protection of Personal Data Act, Article 51(3).

¹⁴⁷ In documents providing for positive measures, Government institutions have used statistical data to analyse the status quo. For example, see, in the *National Strategy of the Republic of Bulgaria for Integration of the Roma 2012-2020*, the section on 'Current status of the Roma community', available at: <http://www.nccedi.government.bg/bg/node/85> (in BG and EN).

¹⁴⁸ 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.

¹⁴⁹ Civil Procedural Code, Article 12.

¹⁵⁰ Civil Procedural Code, Article 12 in conjunction with Article 10.

¹⁵¹ See, *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. 58 in Case No. 10/2006. 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.

in terms of, *inter alia*, the prevalence, consequences and other relevant characteristics of their respective diseases.¹⁵²

There has been no relevant case law in 2019-2020.

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), as '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 been interpreted as limiting the scope of protection to an individual, rather than a group (in the context of hate speech).¹⁵³ This new interpretation is in stark contrast to extensive case law in previous years when, in numerous cases of hate speech targeting communities, the PADC and the courts have found harassment to have occurred.¹⁵⁴

In 2020, the SAC and other courts have applied the concept of harassment to cases of discriminatory comments addressed to/targeting particular individuals.¹⁵⁵ The SCtC upheld a decision by the lower court to the effect that where impugned conduct inevitably, by its very nature, impinges on human dignity, creating an offensive environment, it is unnecessary to prove the resulting non-pecuniary damages, or their causal link to the impugned conduct, as they naturally follow by 'human presumption' and are 'implicitly inferred'.¹⁵⁶ The Court furthermore held that the concept of harassment concerned conduct that objectively impairs human dignity, for which reason the establishing of an act of harassment was *per se* sufficient for establishing the fact of emotional suffering, and therefore, damages to be compensated.

While the directives do not ban 'hate speech' or 'negative stereotyping' as such in general terms, the ban on harassment under the directives applies, as a matter of course, to any expression that corresponds to the definition of harassment, i.e. any unwanted conduct related to any of the protected grounds that takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Accordingly, litigators at the national level have, on many occasions over the years, successfully brought a large number of hate speech cases to the attention of the courts, invoking the ban on harassment under the PADA (the domestic legislation transposing the directives), whose applicability, as mentioned above, is not limited to the material scope of the directives but goes beyond.

Although the directives do not ban harassment in general terms outside their respective material scopes, under the PADA harassment is banned in any field. Accordingly, strategic litigators at the national level have successfully triggered a significant body of case law on hate speech construed by the domestic equality body and the domestic courts as

¹⁵² SAC, Decision No. 2138 of 16 February 2018 in Case No. 13552/2016.

¹⁵³ SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020.

¹⁵⁴ 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. 17862017; SAC, Decision No. 4238 of 2 April 2018 in Case No. 70/2017.

¹⁵⁵ For instance, SAC, Decision No. 4454 of 15 April 2020 in Case No. 9708/2019; SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

¹⁵⁶ SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

harassment within the meaning of the directives, which spans a range of fields both within and outside the scope of the directives as narrowly interpreted. At the national level, under the legislation transposing the directives and going beyond their scope, it has for many years been accepted that anti-minority negative stereotyping in general terms in publicly disseminated expression has an impact on minority rights to equality within the scope of the PADA, i.e. in every field, whether or not the directives can be interpreted in that way. The following paragraphs describe domestic case law dealing with the concept of harassment as applicable to anti-minority public expression as per domestic judicial construction. In general, national case law has construed hate speech as harassment, using the latter concept under the law transposing the directives to protect (or otherwise) people from negative stereotyping.

In 2019, the SAC and the SCC ruled in cases of alleged anti-Roma harassment by means of hate speech that, for harassment to be at hand against a particular claimant, that person needs to have been specifically targeted and affected by the impugned statements.¹⁵⁷ In addition, a concrete, specifically defined hostile environment needs to have been created for them (their workplace, place of study, a place where services are provided, a place of worship, a place of residence, an authority's premises, etc.). The onus is on the claimant to prove such a specific impact. No assumptions can be made based on the content of the impugned verbal conduct or the fact that it has been covered by the media, even if it is found to be offensive. Similarly, no intent to harass on the part of the respondent can be established based on the content of statements. 'Abstract' statements, targeting an unidentified circle of persons, including a racial, ethnic or religious community, are not banned under the concept of harassment (or other forms of discrimination, including less favourable treatment, victimisation and racial segregation). In essence, according to these recent rulings, which diverge from previous SAC case law, hate speech is not covered by harassment.

This would not be tantamount to saying that hate speech is not outlawed at all, but only that it could not be legally qualified as harassment within the meaning of the PADA in particular. It could still be construed as incitement to discrimination under the PADA or as incitement to hatred or discrimination under the Criminal Code, for example. Therefore, these rulings are not as such in breach of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) or the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. At any rate, the PADA, which these rulings apply, is not criminal legislation but part of civil and administrative law.

In line with this new restrictive trend, the SCAC, a lower instance court, denied that there was harassment as found by the PADC in the case of an anti-Roma publication as the complainant had failed to prove that she had been personally affected. The lack of a specific victim meant the lack of a violation under the PADA.¹⁵⁸

However, the case law on hate speech targeting an entire community has been contradictory. The SAC confirmed a decision against a media company that had failed to moderate anti-Roma hate comments posted on its news site.¹⁵⁹ The PADC had found that the comments, which were general in nature and therefore applicable to any and all contexts, including the specific fields covered under the directive, constituted ethnic harassment, and the company was given an instruction to introduce active continuous comment moderation. The SAC agreed that the comments impinged upon human dignity, instilled ethnic hatred and contained calls to violence, regardless of the intent behind them or of the lack of any consequences (in terms of actual violence committed). The site owner

¹⁵⁷ SCC, Decision No. 2 of 19 June 2019 in Case No. 3203/2018, Decision No. 819 of 29 November 2019 in Case No. 2596/2019; SAC, Decision No. 636 of 15 January 2019 in Case No. 7229/2018, SAC, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

¹⁵⁸ SCAC, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019.

¹⁵⁹ SAC, Decision No. 7269 of 15 May 2019 in Case No. 11803/2017.

had failed to take measures to control the content, thereby allowing users to infringe the absolute ban on harassment. The court did not discuss the fact that the impugned hate comments targeted the Roma community as such, i.e. Roma in general, and not the individual complainant before the PADC. While the directive does not apply to hate crime or to 'hate speech' as such, this case is relevant as it concerns verbal conduct that corresponds to the definition of harassment under the directive: the domestic instances applied the concept of harassment within the meaning of the directive to that impugned conduct. However, this case does not negate the 2019 case law trend discussed above, according to which general hate speech (by the respondent) is not harassment. There is a difference between holding a company liable for not moderating general hate speech by anonymous users and holding a named respondent liable for general hate speech.

The restrictive 2019 decisions in Roma cases (no other grounds being affected), discussed above, to the effect that general hate speech is not harassment are influenced by institutionalised anti-Romaism and favour racist authority figures. They contravene the *Firma Feryn* principle developed by the CJEU¹⁶⁰ that wholesale discriminatory statements are outlawed, regardless of whether an individual victim is identified. While these decisions do not concern cases that are limited to employment or other specific fields within the scope of the directives, the anti-minority expression they analyse, being generally applicable, concerns equally all the fields covered under the PADA. The PADA, which in many respects goes beyond the directives, including in its comprehensive material scope, was meant by its drafters – and has, for more than 15 years, been interpreted by domestic courts and the PADC as such – to ban harassment, including generalised harassment targeting minorities as such in all fields.

These judgments are relevant to the directives in so far as, under the PADA – the legislation transposing the directives, which goes beyond them – such verbal conduct legally qualifies as harassment as defined by the Race Directive. As clarified above, national case law has for years interpreted the concept of harassment under the PADA (defined in accordance with the directives) as encompassing speech whereby public influencers legitimise comprehensive anti-minority stances. Domestic adjudicators have seen such unwanted conduct as having an adverse impact on minorities' rights to equality in all fields protected under the PADA, including employment, education, healthcare, social security, as well as other fields.

The rulings requiring hate speech to have a specific victim contravene the ECtHR's judgment, *inter alia*, in *Aksu v. Turkey*, which has recognised that group negative stereotyping, i.e. not targeting an individual, is capable of impinging on group members' private life rights under the Convention.¹⁶¹

Hypothetically, the recent restrictive 'specific victim' SAC trend could infect the case law under the PADA with regard to other unpopular minorities as well – provided that future case law affirms the trend, which is not necessarily a given as the SAC's case law in previous years has recognised that general (anti-Roma) non-individualised hate speech violates the PADA. Moreover, the emblematic cases of *Behar* and *Budinova*, which were pending before the ECtHR in 2020, possibly provide support for possible rectification of the case law.¹⁶²

¹⁶⁰ Judgment of 12 March 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, EU:C:2008:155.

¹⁶¹ See also *Behar and Gutman* and *Budinova and Chaprazov*. At the cut-off date for this report, these cases concerning facts dating from 2005 were pending before the ECtHR. The cases were decided after the cut-off date, on 16 February 2021. The Court found that the domestic courts had breached their positive duties to protect victims of general hate speech against ethnic minorities targeting no specific individual. (The cases were represented by the author of this report.) For analysis of the Court's hate speech standing case law, see M.S. Ilieva, 'The Rights of Others in Cases of Othering', *Strasbourg Observers*, April 2021.

¹⁶² See previous footnote.

In 2020, in an anti-Roma hate speech case, in which the complainant had not been personally targeted, the SAC held that the Prosecutor General was not liable for his impugned remarks as, under the Constitution, magistrates may not be held liable for their official actions (unless they constitute a crime).¹⁶³ Proceedings under the PADA in which the PADC would concern itself with the possible administrative-penal liability of an alleged discriminator who was a magistrate were unconstitutional. In the case in question, however, the respondent had been interviewed on television and therefore the question was open as to whether he was performing an 'official action' when he engaged in negative stereotyping of the Roma. The activist complainant has since lodged this case with the ECtHR.¹⁶⁴

In 2020, the domestic courts have qualified (or discussed) as harassment instances of less favourable treatment, such as a refusal to provide a Muslim prisoner with an opportunity to work;¹⁶⁵ demotion of a trade unionist also linked to her age and disability;¹⁶⁶ disciplinary sanctioning, denial of a pay rise, etc. allegedly on multiple grounds, including disability.¹⁶⁷

In some cases, the SAC has refused to find harassment as the impugned conduct was not 'objectively' aimed at impairing the affected individual's dignity; it did not amount to manifesting 'conscious negative bias', but she merely subjectively perceived it to be so.¹⁶⁸ The Court has held that harassment may not depend exclusively on the target's perception of their treatment; instead, the relevant aims need to be established as well (creating a hostile environment, impinging on dignity), and the relevance of subjective feeling due to unwanted conduct may not be expansively construed.¹⁶⁹ Therefore, conduct with the 'effect' of creating a hostile environment and humiliating an individual would not be sufficient in cases in which this effect was only subjectively perceived to be at hand by the affected individual. In such cases, 'purpose' would also be required. Conversely, if the evidence indicated that the 'effect' was objectively at hand, 'purpose' might not be required.

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

Additionally, in business activities, an individual's rejection or tolerating of harassment may not be a basis for any decision affecting that individual.¹⁷⁰

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.¹⁷¹ 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.¹⁷² 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.¹⁷³ If an employer fails to take such action, the affected employee could take legal action against them.

¹⁶³ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

¹⁶⁴ See media report from 30 November 2020 at: <https://www.svobodnaevropa.bg/a/30976624.html>.

¹⁶⁵ SCtC, Decision No. 261079 of 9 November 2020 in Case No. 15323/2019.

¹⁶⁶ SAC, Decision No. 5023 of 28 April 2020 in Case No. 13911/2019.

¹⁶⁷ SAC, Decision No. 387 of 10 January 2020 in Case No. 3539/2019.

¹⁶⁸ SAC, Decision No. 387 of 10 January 2020 in Case No. 3539/2019.

¹⁶⁹ SAC, Decision No. 10369 of 28 July 2020 in Case No. 10512/2019.

¹⁷⁰ PADA, Article 37(1) and (3).

¹⁷¹ Obligations and Contracts Act (*Закон за задълженията и договорите*), Article 49.

¹⁷² PADA, Article 8.

¹⁷³ PADA, Article 17.

However, in 2020, the SCtC held that an employer (an entity) was not liable for the harassment perpetrated by one of their employees against another employee outside of the workplace (the impugned remarks were made in the place of study of the target, on TV and in proceedings before the PADC).¹⁷⁴ The Court held that the PADA provided for employers' liability only where an act of discrimination is carried out in the workplace, as the employer has control there. Equally, the employer was not responsible for the discriminatory statements made before the PADC as the liable individual had defended himself in the proceedings, not representing the employer entity which was a party to them in its own right. The harasser was entitled to be in charge of his own line of defence and could not be controlled by the employer in that regard. On TV, again, the harasser had not identified himself as an employee of the entity in question. The fact that the employer entity had failed to distance itself from the impugned public statements was not relevant. The Court did not examine whether the individual in question was well known and would, in the particular context, be perceived by viewers and the public more generally as implicitly representing the entity when he made his impugned remarks. While the harasser had been a member of the governing board of the entity, the board consisted of nine persons in total, and the harasser had not been its chair. None of the other eight individuals, including the one authorised to represent the entity, had engaged in discriminatory conduct against the claimant. Furthermore, the harasser was not in a position to unilaterally determine the relationship between the targeted employee and the entity. This decision is open to possible criticism from the standpoint of the CJEU's judgment in *Asociația Accept*.¹⁷⁵

Furthermore, under the PADA, a manager of an educational establishment who receives a complaint by a student alleging harassment by a teacher or other staff, or by another student, shall be under a duty to immediately conduct an inquiry and take measures to abort the abuse, as well as disciplinary sanctions.¹⁷⁶

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.¹⁷⁷ 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.¹⁷⁸

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'.¹⁷⁹ 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

¹⁷⁴ SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

¹⁷⁵ Judgment of 25 April 2013, *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, C-81/2012, EU:C:2013:275.

¹⁷⁶ PADA, Article 31.

¹⁷⁷ PADA, Article 5 in conjunction with Additional Provisions, § 1.5.

¹⁷⁸ For instance, PADC, Decision No. 450 of 20 November 2018 in Case No. 180/2017.

¹⁷⁹ SAC, Decision No. 7863 of 12 June 2018 in Case No. 697/2017.

MP/journalist member of the xenophobic Ataka party.¹⁸⁰ The court did not find incitement to discrimination, including an instruction to discriminate.

In Bulgaria, instructions explicitly constitute a form of discrimination. Under the PADA, in 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.¹⁸¹ The instructor is liable for the instruction and not for the discrimination that ensued. There is no information on case law concerning instructions as such. The case law on incitement concerns hate speech.

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

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

In Bulgaria, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law, but is not defined. The PADA, in Article 16, provides for accommodation for people with disabilities in employment.¹⁸² This duty covers employees and successful job applicants (selected candidates entering employment) but not all job applicants (for purposes of their application and participation in the selection process). The limit of the duty is when 'costs are unfoundedly large and would seriously hinder' the employer.¹⁸³ While Article 16 provides for adjusting 'the workplace', seemingly thereby excluding working hours and other aspects of a job that could possibly require adjusting, there is no judicial interpretation to the effect that the duty is limited in this way. The term 'workplace' is open to broader interpretation and was intended by the legislator to be broadly interpreted: in national legal usage, this term may be synonymous with 'job'.

Under the PDA, 'reasonable facilitations' (*разумни улеснения*) are listed among the means to support people with disabilities for purposes of their social inclusion.¹⁸⁴ People with disabilities are entitled to rehabilitation, which includes, *inter alia*, professional rehabilitation and labour rehabilitation.¹⁸⁵ Professional rehabilitation includes 'support to overcome barriers of functional limitations to practice an acquired profession, an accommodated (adapted) workplace and work conditions fitting the needs of the person with a disability and others'.¹⁸⁶ Labour rehabilitation includes 'adapting the labour environment to ensure employment for people with disabilities'.¹⁸⁷ Under the PDA, there is no 'reasonable' or 'disproportionate burden' limit to these entitlements. (The PDA was adopted to transpose the CRPD rather than EU law.)

Under the PDA, an employer is under a duty to adapt the workplace to the needs of a person with a disability upon their hiring, if necessary, depending on the type and degree of the disability.¹⁸⁸ This provision, on the face of it, does not cover job applicants as such but only selected candidates. Furthermore, on the face of it, it does not cover existing employees whose disabilities occur in the course of their employment. An employer may

¹⁸⁰ This case was represented by the author of this report.

¹⁸¹ PADA, Articles 71 and 78.

¹⁸² 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'.

¹⁸³ PADA, Article 16.

¹⁸⁴ PDA, Article 5(2.4).

¹⁸⁵ PDA, Article 29(1).

¹⁸⁶ PDA, Article 29(6.5).

¹⁸⁷ PDA, Article 29(9.6).

¹⁸⁸ PDA, Article 40.

be funded by the Agency for People with Disabilities for the purpose of securing access to a workplace for a person with a long-term disability; for adapting a workplace for a person with a long-term disability; or for equipping a workplace for a person with a long-term disability.¹⁸⁹ This support is available only for people who are officially (medically) assessed as disabled.

Under the PADA and the PDA, the entitlements apply to all professional contexts and employment relationships. Under the PADA, the entitlement covers successful job applicants – again, only successful applicants ('...upon the latter's hiring...') and not all applicants, as clearly not all will be hired – as well as employees. It appears that the PDA entitlement covers only successful job applicants, but not employees who became disabled subsequent to being hired. Accordingly, job applicants are not covered by the specific provisions of Article 16 of the PADA and Article 40 of the PDA. They could not, based on those provisions, claim reasonable accommodation at an interview. If confirmed by judicial interpretation, this would be a breach of the directive. However, the general provisions of the PDA on 'reasonable facilitations', accessibility, and 'professional rehabilitation' and 'labour rehabilitation, construed as a system, could arguably serve as a legal basis for judicial interpretation covering job applicants, as well as selected candidates and employees.

As the duties under both laws refer to 'employers', 'the workplace' and 'the labour environment', they arguably do not cover people undergoing vocational training. In the case of training provided by an employer, this apparent meaning of the provisions, if not expanded by judicial construction, would be in breach of the directive. There are no criteria in the laws for assessing the extent of the duties.

According to the Labour Code, employers are under a duty to provide accommodation for workers 'who, because of illness or labour accident, are unable to perform their assigned job but are able, without endangering their health, to perform another suitable job or the same one under alleviated conditions'.¹⁹⁰ This duty pre-dates both the PADA and the IPDA, as well as the directive.¹⁹¹ 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.¹⁹²

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'.¹⁹³

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.¹⁹⁴ 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.¹⁹⁵

The lack of definitions of the duties on employers to provide reasonable accommodation for people with disabilities is not on record as having caused difficulties in implementation, as there have, as yet, been very few reasonable accommodation cases, as far as information is available.

¹⁸⁹ PDA, Article 44(1.1-3).

¹⁹⁰ 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.

¹⁹¹ The Labour Code, including this particular provision, has been in force since 1987.

¹⁹² Labour Code, Article 317(4).

¹⁹³ Civil Servants Act (*Закон за държавния служител*), entered into force 28 August 1999, Article 30.

¹⁹⁴ Healthy and Safe Working Conditions Act (HSWCA) (*Закон за здравословните и безопасни условия на труд*), last amended 5 December 2017, Article 16(1.4).

¹⁹⁵ 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)).

There is no provision or case law to the effect that the availability of financial assistance from the state is to be taken into account in assessing whether there is a disproportionate burden.

b) Case law

In 2019-2020, no relevant case law has been identified.

In 2018, the SAC 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 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).¹⁹⁶ 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 Court used the term without clarifying in what specific way the payment in question constituted reasonable accommodation within the meaning of the directive or the CRPD. It implicitly accepted that access to the treatment in question was an imperative need for the person concerned as the treatment was repeatedly termed 'life-saving' in the decision. Again, the court did not compare the person concerned to other persons, as it expressly held that, in such a case, no comparison was needed. The treatment, accepted as life enabling, was implicitly considered as accommodation for the purposes of continuing the person's life (with public support).

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 'people with disabilities' and 'people with long-term disabilities' in the PDA 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. They do not 'require', strictly speaking, medical proof of disability, as claimants/complainants are at liberty to choose their own evidence to present, in accordance with general procedural rules. It is implicitly accepted that medical proof (official assessment by the competent expert administrative bodies) is expected, in a legal context, to prove disability. There have not been any cases in which complainants have tried to establish disability with regard to a specific individual without the use of official medical certificates. In practice, this is not on record as having been an issue for litigation in the sense of people with disabilities not possessing such certificates,

¹⁹⁶ SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

having been unable to obtain them for some reason. As a rule, such certificates would be obtained by an individual with a disability in order for them to access the various entitlements, financial and otherwise, of people with disabilities under the legislation, regardless of any anti-discrimination protection.

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

In Bulgaria, failure to meet the duty of reasonable accommodation is not recognised as a form of discrimination under the PADA or PDA. 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 PDA, the Labour Code and the Healthy and Safe Working Conditions Act.

In a 2018 case (there are no 2019 or 2020 cases), 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.¹⁹⁷ 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 organisation. Under the PDA, employers and professional institutions have no such defence, but absolute duties instead.

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.¹⁹⁸ The PDA provides for a duty on universities to ensure a supportive environment and 'special accommodations'.¹⁹⁹ Children and school students are entitled to 'additional support' to facilitate their equal access to quality education and inclusion.²⁰⁰ Regional inclusive education support centres have a duty to provide such additional support to children and students with disabilities,

¹⁹⁷ SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

¹⁹⁸ PADA, Article 32.

¹⁹⁹ PDA, Article 33.

²⁰⁰ PDA, Article 31(2).

as well as 'resource support' to children and students with 'special educational needs'.²⁰¹ The PDA duties are absolute (there is no disproportionate burden defence).

In addition, under the PDA, people with long-term disabilities are entitled to financial aid for the accommodation of housing.²⁰² A person with a disability who experiences serious difficulties in exercising independently their rights when undertaking legal actions is entitled to support measures (assisted decision-making) for access to justice; those measures are to be provided for by law.²⁰³

The Ordinance on Inclusive Education²⁰⁴ (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'.²⁰⁵

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 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.

The Ordinance provides for equal access to education through reasonable facilitations and various forms of accessibility and other resources.²⁰⁶ It defines reasonable facilitations as a means to make textbooks and other learning materials accessible.²⁰⁷ It specifically provides for reasonable facilitations for taking school leaving exams.²⁰⁸

Under the Physical Education and Sports Act, sports shall be promoted by, *inter alia*, the creation of conditions for adapted physical exercise and sports practice by people with disabilities.²⁰⁹ In schools and pre-school establishments, conditions for adapted physical exercise and sports shall be created.²¹⁰ Adapted physical activity is defined as physical activity by people of reduced capabilities or health issues that fosters their health.²¹¹

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).²¹² The court held that, for

²⁰¹ PDA, Article 32(1).

²⁰² PDA, Article 24(2.2), Article 75(1).

²⁰³ PDA, Articles 65 - 67. Article 65(1) was amended in the above sense in 2020, with the amendment entering into force as of 2021.

²⁰⁴ Ordinance on Inclusive Education (OIE) (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended 18 December 2018, Additional Provisions, § 1.8.

²⁰⁵ OIE, Additional Provisions, § 1.8.

²⁰⁶ OIE, Article 102.

²⁰⁷ OIE, Article 105.

²⁰⁸ OIE, Article 107.

²⁰⁹ Physical Education and Sports Act (*Закон за физическото възпитание и спорта*), last amended 10 November 2020, in force as of 1 January 2021, Article 47(2.3).

²¹⁰ Physical Education and Sports Act, Article 51(1).

²¹¹ Physical Education and Sports Act, Additional Provisions, § 1.1.

²¹² SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

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]'.²¹³ There has been no litigation on record as yet based on this provision. It is unknown whether it is applied in practice or not.

Under the Labour Code, the Council of Ministers shall determine the days for religious celebration of religious communities other than the Eastern Orthodox Church, based on proposals by the official leadership of each religious community.²¹⁴ Under the Labour Code, workers and employees of a religious denomination other than Eastern Orthodox Christianity are entitled to use a portion of their annual paid leave or unpaid leave, whichever they prefer, on the days officially determined for the relevant religious celebrations.²¹⁵ Their employer is under a duty to allow such leave. Those days of leave may not be more numerous than the ones determined for Eastern Orthodox celebrations. Under the Civil Servant Act, individuals are entitled to identical provision.²¹⁶

Annually, the Government (the Council of Ministers) adopts a decision determining the dates for religious celebrations of specified religious communities for the following year. The dates for 2020 were determined by Decision No. 798 of 27 December 2019.²¹⁷ Twelve religious communities were recognised: the Catholic Church (four days of celebrations), the Muslim community (six days), the Jewish community (seven days), the Armenian Apostolic Church (six days), the 'White Brotherhood' community²¹⁸ (six days), the Seventh-day Adventist Church (six Saturdays, if they are expected to work on those days), the Krishna Conscience community (five days), Diamond Way Buddhism (one day), the Jehovah's Witnesses (six days), Evangelical churches (one day), the Buddhist community (four days), and the Bahá'í community (six days).

²¹³ Under discrimination law, there is no definition of religion or belief in this or any other context.

²¹⁴ Labour Code, Article 173(3).

²¹⁵ Labour Code, Article 173(2).

²¹⁶ Civil Servant Act, Article 57(5).

²¹⁷ Council of Ministers, Decision No. 798 of 27 December 2019 (*Решение № 798 от 27 декември 2019 г. за определяне на дните за религиозни празници на вероизповеданията, различни от източноправославното, през 2020 г.*), available at: <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=144304>.

²¹⁸ Information about this faith community, which has nothing to do with racist notions, may be obtained at: https://en.wikipedia.org/wiki/Universal_White_Brotherhood.

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.²¹⁹ 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.²²⁰ 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.²²¹

Those with irregular status are entitled to the protection of the directives, as factual being within the territory is the only condition.

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.²²² The courts and the PADC have generally recognised the standing of legal persons as victims.²²³ In 2018, the 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.²²⁴ 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.²²⁵ Case law has recognised this.

However, in one case (alleged anti-Roma hate speech by the Prosecutor General), the SAC held that, under the Constitution, magistrates may not be held liable for their official actions (unless they constitute a crime).²²⁶ Proceedings under the PADA regarding administrative-penal liability of a magistrate were unconstitutional. This ruling, should it become settled case law, could limit the personal scope of the PADA in breach of the

²¹⁹ PADA, Article 3(1).

²²⁰ PADA, Article 7(1.1).

²²¹ Constitution, Article 26(2).

²²² PADA, Article 3(2).

²²³ For instance, SAC Decision No. 5539 of 11 May 2016 in Case No. 3732/2016, in which 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.

²²⁴ SAC, Decision No. 4238 of 2 April 2018 in Case No. 70/2017.

²²⁵ PADA, Article 6(1).

²²⁶ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

directives in cases where magistrates engaged in harassment, for instance, or made case administration decisions based on protected grounds – for example, the cases involving a blind juror discussed in Section 4.1. In the case discussed above, the Prosecutor General was being interviewed on television when he made his racist comments – he was not performing duties as a magistrate, strictly speaking. Accordingly, should this ruling become established interpretation, it could possibly apply to contexts involving magistrates beyond legal proceedings.

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

a) Protection against discrimination

In Bulgaria, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.²²⁷ 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.²²⁸ The prohibition is expressly *erga omnes*. The case law has recognised this, with numerous cases against public bodies heard and decided on the merits (regardless of some unstable contradictions in previous years regarding the liability of public bodies).

However, in 2019, the SAC ruled that the PADC has no authority to issue injunctions to public bodies, only the authority to do so for private natural and legal persons.²²⁹ Vis-à-vis public bodies that are found to have discriminated, the PADC has the authority only to make recommendations. This ruling, in an age-related case in which the PADC had ordered the Council of Ministers (the Government) to amend a piece of secondary legislation, invoked ‘the rule that administrative bodies have specified competences and may not usurp the competencies assigned by law to other bodies’. The SAC considers the PADC to be an ‘administrative body’ (as per established case law). The Court referred to an understanding that the PADC may not decide policy questions, which the Government is competent to decide by making secondary legislation. This raises no issues of compliance with the directives as the latter do not require that the equality body should have the power to make orders for structural relief. This SAC ruling does not affect the PADC’s power to make binding declarations of discrimination and to impose binding sanctions.

3.2 Material scope

3.2.1 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 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.²³⁰ The relevant provisions consist of the general ban on discrimination, which has universal scope,²³¹ and certain specific employment discrimination bans.²³² The latter provide examples of the conduct prohibited under the general discrimination ban (e.g. no discriminatory job requirements; no

²²⁷ PADA, Article 3(1).

²²⁸ PADA, Article 6(1).

²²⁹ SAC, Decision No. 15498 of 14 November 2019 in Case No. 3959/2018.

²³⁰ PADA, Article 6(1) and Articles 12-28.

²³¹ The Supreme Administrative Court has recognised in its case law that the ban is, in that sense, ‘absolute’.

See, among other authorities, SAC, Decision No. 7597 of 15 June 2017 in Case No. 569/2016.

²³² PADA, Article 6(1), Articles 12-28 and Article 37(2).

demands for information about protected grounds from job applicants; right to equal conditions for access to a profession or activity and to equal opportunities for exercising a profession or activity). These specific provisions constitute Title I of the PADA: 'Protection in the exercise of the right to labour'.

In 2020, as in 2019, the courts decided a number of cases brought by (former) employees and civil servants.²³³ The Sofia Regional Court expressly held that the specific bans on discriminatory conduct in the field of labour under the PADA were not exhaustively listed and did not contradict the entitlement of every person to protection from all forms of discrimination, including in labour relations.²³⁴

In terms of 'conditions for access to self-employment', the PADA explicitly guarantees individuals an entitlement to equal conditions for access to a profession or activity, and an opportunity to practice the profession.²³⁵ Additionally, discrimination is prohibited in the public sector and the economy directly or indirectly related to business activity, including as regards the setting up of, the provision of equipment for or the expansion of business activity, or the starting up or expansion of any form of such activity.²³⁶ Furthermore, the PADA prohibits trade unions, industry/branch and other professional organisations from fixing requirements for enrolment, membership and participation in their activities based on any protected grounds, apart from education.²³⁷ Additionally, conditions for access to self-employment are covered by the general comprehensive provision on the universal material scope of the PADA.²³⁸

There is no relevant case law on record.

3.2.2 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.²³⁹ In addition to banning all manifestations of discrimination in an all-encompassing material scope, the PADA specifically outlaws, *inter alia*: hiring under worse conditions; unequal working conditions; unequal pay; unequal performance review criteria; unequal opportunities for career advancement; unequal conditions/opportunities for career development in a profession or activity.²⁴⁰

²³³ See, for instance, among many others, SAC, Decision No. 2691 of 19 February 2020 in Case No. 8622/2019, Decision No. 5031 of 28 April 2020 in Case No. 14469/2019, Decision No. 1204 of 27 January 2020 in Case No. 5536/2019; Decision No. 2711 of 25 February 2019 in Case No. 5704/2017, Decision No. 3922 of 18 March 2019 in Case No. 6516/2017; SCC, Ruling No. 497 of 19 June 2019 in Case No. 881/2019.

²³⁴ SRC, Decision No. 189 of 19 June 2020 in Case No. 96/2020.

²³⁵ PADA, Article 36.

²³⁶ PADA, Article 37(2).

²³⁷ PADA, Article 26.

²³⁸ PADA, Article 6(1).

²³⁹ 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.'

²⁴⁰ PADA, Articles 12-14, and 26.

3.2.3 Access to all types and 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.²⁴¹

3.2.4 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 relation to 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.²⁴²

3.2.5 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.²⁴³ All five grounds are covered.

Racial/ethnic discrimination in social housing is covered regardless of whether it is defined as social protection or as housing (or in any other manner), as the PADA bans discrimination in all areas, applicable to all rights and freedoms.

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.²⁴⁴

3.2.6 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.²⁴⁵ All five grounds are covered.

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

In Bulgaria, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.²⁴⁶ 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

²⁴¹ 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.

²⁴² PADA, Article 6(1) and Article 36.

²⁴³ PADA, Article 6(1).

²⁴⁴ PADA, Article 7(1.8).

²⁴⁵ 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.

²⁴⁶ 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.

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.²⁴⁷ 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.²⁴⁸ Compulsory pre-school and school education is free.²⁴⁹

The practice (notably in relation to pupils with disabilities) gives rise to problems. While under the legislation integrative (inclusive) education is the rule,²⁵⁰ and declared an integral part of the right to education,²⁵¹ in practice, inclusion of all pupils with disabilities is yet to be achieved.

Approximately one third of all children with disabilities (10 000 out of 32 000) are excluded from education, according to NGO sources.²⁵² In 2018-19, 22 035 children with disabilities were enrolled in schools and kindergartens, including mainstream ones.²⁵³ According to UNICEF, kindergartens and schools lack adequate support needed for inclusiveness: teachers' capacity to provide personalised comprehensive (multi-disciplinary) support to students with special needs is insufficient.²⁵⁴ More supportive (alternative communication) technology and adapted learning materials are needed, as well as physical accessibility in most schools and public transportation to schools, sports facilities, etc.²⁵⁵ Negative stereotyping and discrimination by peers, staff and others result in segregation of students with disabilities. Experts confirm that often, the 'integrated' education of students with disabilities occurs in separate classes and groups.²⁵⁶ Experts agree that children with psychiatric disabilities, in particular, are targets of 'exceptionally grave discrimination': they are not allowed at/are expelled from kindergartens/schools, occasionally because parents of the majority mobilise to protest against their inclusion.²⁵⁷

Remote education due to the COVID-19 pandemic has had a disproportionate prejudicial impact on students with disabilities. This has been due to a lack of internet connectivity or challenges in providing online non-verbal support. As of June 2020, this had resulted in 20 % of students with special educational needs being excluded from remote special educational support.²⁵⁸ In order to mobilise alternative support to fill this gap, UNICEF and the Ministry of Education, with the Regional Centre for Support of the Inclusive Education Process in Sofia, initiated a campaign aimed at developing a specialised interactive platform to improve accessibility.²⁵⁹ This was planned to become operational in autumn 2020.

²⁴⁷ Pre-School and School Education Act (PSEA) (*Закон за предучилищното и училищното образование*), adopted 13 October 2015, entered into force on 1 August 2016, last amendments 29 December 2018, Article 7(1-2).

²⁴⁸ PSEA, Article 3(2.3-4).

²⁴⁹ PSEA, Article 9(1-3).

²⁵⁰ PSEA, and secondary legislation – the Ordinance on Integrative Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended 18 December 2018.

²⁵¹ PSEA, Article 7(2).

²⁵² Information shared with media by representatives of the 'Maria's World' Foundation: https://lupa.bg/news/32-000-deca-s-uvrezhdaniya-u-nas-10-000-ne-vlizat-v-klas_69079news.html (July 2020).

²⁵³ See [UNICEF thematic overview](#).

²⁵⁴ See [UNICEF thematic overview](#). See also [expert opinion](#).

²⁵⁵ See [UNICEF thematic overview](#). See also [expert opinion](#).

²⁵⁶ Expert [opinion](#).

²⁵⁷ Expert interview accessible at: <https://bnr.bg/post/101370469/vesela-banova>.

²⁵⁸ Kaloyan Damyanov, chairperson, National Association of Support Teachers, interview, 29 June 2020: <https://www.bgonair.bg/a/2-bulgaria/194748-obrazovanieto-za-detsata-sas-spetsialni-potrebnosti-izostava>. See also data released by UNICEF to the media: <https://press.azbuki.bg/news/novini-2020/broj-31-2020/obrazovanie-za-vsyako-dete/>.

²⁵⁹ See information released by UNICEF to the media: <https://press.azbuki.bg/news/novini-2020/broj-31-2020/obrazovanie-za-vsyako-dete/>.

Under the legislation, children with sensory (hearing or sight) impairments are channelled into special schools for their category.²⁶⁰ Children with other disabilities are entitled to enrol in general kindergartens and schools,²⁶¹ and may not be segregated into separate classes or groups.²⁶² However, they may be referred, on parental application, to separate special schools (centres for special educational support) or to special groups based on an assessment of their special needs.²⁶³ Under the law, this may be done 'as an exception, when educational objectives cannot be achieved through another form of support'.²⁶⁴ 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.

No public data are available on the numbers of children segregated in special schools, excluded from any schooling or integrated into schools and kindergartens.

In 2018 (there being no recent cases), the SAC confirmed a decision by the Sofia City Administrative Court awarding damages to the mother of a child with disabilities 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).²⁶⁵ 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)).

There is no relevant case law from 2019 or 2020.

a) 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. According to the 2014 annual report of the European Union Agency for Fundamental Rights (FRA), more than 25 % of Roma pupils attend de facto segregated school classes.

According to a 2020 nationally representative sociological study of the education of the Roma carried out by an NGO, Trust for Social Achievement,²⁶⁶ the number of Roma children in segregated schooling is growing alarmingly: having been at 31 % in 2011, the share of Roma children studying in exclusively Roma schools currently stands at 47 %.²⁶⁷

In 2020, according to mainstream media, school 'white flight' motivated principals of integrated schools to tend to concentrate Roma students in (a) class(es) of their own.²⁶⁸ This, in turn, resulted in some instances in which the parents of Roma children who were already enrolled opposed the enrolment of further Roma children due to fears that their

²⁶⁰ PSEA, Article 441.1).

²⁶¹ PSEA, Article 1921).

²⁶² PSEA, Article 995).

²⁶³ PSEA, Article 1455) and Article 1941).

²⁶⁴ PSEA, Article 194(1).

²⁶⁵ SAC, Decision No. 5516 of 26 April 2018 in Case No. 187/2017.

²⁶⁶ Details available at: <http://socialachievement.org/en/>.

²⁶⁷ See media reports at: <https://bnr.bg/horizont/post/101406542>; <https://www.24chasa.bg/novini/article/9423115>.

²⁶⁸ See a compilation of interviews with Roma parents, activists, principals and a Deputy Minister at: <https://btvnovinite.bg/predavania/btv-reporterite/btv-reporterite-njama-mesta.html>.

children's class would then become an overwhelmingly Roma class. As a result of direct refusals by integrated schools' principals to enrol Roma children, a large share of young Roma study in exclusively Roma schools near their homes in segregated Roma residential areas. According to the Roma NGO Savore, there are 57 such exclusively Roma schools.²⁶⁹

COVID-19-related remote education, introduced as of mid-March 2020, has had a disproportionate prejudicial impact on Roma students, a significant share of whom have not been able to participate effectively, mainly due to a lack of internet connectivity and a lack of devices.²⁷⁰ While the authorities have taken measures to tackle the first issue, the lack of devices has remained an obstacle.²⁷¹ According to official (Ministry of Education) data, between 35 000 and 45 000 students lack such devices.²⁷² According to the Amalipe Roma NGO, over a quarter of the students in 200 predominantly Roma (segregated) schools do not have them (over 90 % do have them in just 22.34 % of the schools).^{273 274} In certain schools (11.68 %), the share of such students is over 75 %.²⁷⁵

The Minister of Labour and Social Policy has stated that the pandemic paused the process of Roma students' integration.²⁷⁶

Other patterns of educational exclusion/segregation of Roma include:

1. Children at home or in the street with no access to school at all, as 'Roma children are less likely to attend kindergarten and much more likely to drop out of school'.²⁷⁷ According to the FRA, Roma face three major interrelated education problems: low preschool attendance; a high risk of segregated schooling, compounded by prejudice and discrimination; and high drop-out rates before completing secondary education.²⁷⁸

One report, entitled *Strategies and Tactics to Combat Segregation of Roma Children in Schools*, states: 'Roma children experience lower enrolment, attendance, and completion levels than average at all levels of education. Access to non-compulsory preschool education (before age 5) is limited due to the attendance fees that registration requires and preferential registration for children with employed parents. Additionally, many Roma children are excluded from compulsory preschool education due to space limitations.'²⁷⁹

The report goes on to say: 'According to 2011 census data, 23.2 percent of Roma children of compulsory school age do not attend school, compared to 5.6 percent of Bulgarian children on the whole. Around 10 percent of Roma children between the

²⁶⁹ See a compilation of interviews with Roma parents, activists, principals, and a Deputy-Minister at: <https://btvnovinite.bg/predavania/btv-reporterite/btv-reporterite-njama-mesta.html>.

²⁷⁰ See: <https://amalipe.site/newsite/romite-v-bulgaria-i-covid-19/> (in BG).

²⁷¹ See: <https://amalipe.site/newsite/romite-v-bulgaria-i-covid-19/> (in BG).

²⁷² See: <https://amalipe.site/newsite/romite-v-bulgaria-i-covid-19/> (in BG).

²⁷³ See: <https://amalipe.site/newsite/%d0%bd%d0%b0%d1%86%d0%b8%d0%be%d0%bd%d0%b0%d0%bb%d0%bd%d0%b0-%d0%bc%d1%80%d0%b5%d0%b6%d0%b0-%d0%b7%d0%b0-%d0%b4%d0%b5%d1%86%d0%b0%d1%82%d0%b0-%d0%bf%d0%be%d0%b4%d0%bf%d0%be%d0%bc%d0%b0%d0%b3%d0%b0/> (in BG).

²⁷⁴ See: <https://amalipe.site/newsite/romite-v-bulgaria-i-covid-19/> (in BG).

²⁷⁵ See: <https://amalipe.site/newsite/romite-v-bulgaria-i-covid-19/> (in BG).

²⁷⁶ See media report at: <https://www.mediapool.bg/40-ot-mladezhite-romi-sa-sas-sredno-obrazovanie-news316729.html>.

²⁷⁷ European Commission (2019), *Education and Training Monitor 2019: Bulgaria*, p. 9, available at: https://ec.europa.eu/education/sites/education/files/document-library-docs/et-monitor-report-2019-bulgaria_en.pdf.

²⁷⁸ Fundamental Rights Agency (2014), *Roma survey – Data in focus: Education: the situation of Roma in 11 EU Member States*, available at: http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf.

²⁷⁹ The FXB Centre for Health and Human Rights at Harvard University (2015), *Strategies and Tactics to Combat Segregation of Roma Children in Schools: Case studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria, and Greece*, p. 93, available at: <http://www.dare-net.eu/cms/upload/file/strategies-and-tactics-to-combat-segregation-Case-studies-english.pdf>.

ages 7 and 15 attend school irregularly (i.e., missing at least four school days a month). During the 2010/2011 school year, only 42 percent of Roma children attended preschool or kindergarten, a 'striking phenomenon' according to a 2013 FRA report. In addition, dropout rates for Roma children are generally extremely high, particularly between the first and fourth grades. It has also been shown there is a lack of interest on the part of teachers and school officials in ensuring the attendance and literacy of Roma children. Teachers do not adapt their methods to the needs of different students, even though most Roma children speak another language. Furthermore, there is a dearth of programs and activities to prevent early school leaving at upper educational levels.²⁸⁰

Another report states that, 'In Bulgaria, early schools leaving is particularly high among Roma (67 %) while the national average is 12.7 % - which is still above the national European 2020 target and EU average.'²⁸¹

2. Children in special schools for students with 'special educational needs'²⁸² (under the law, 'centres for special educational support', or 'special groups', or 'field' (*изнесени*) classes/groups in social services in the community) (over-representation).²⁸³
The *Strategies and Tactics* report states: 'Most children in Bulgaria's special schools and residential care institutions for orphans are Roma (60 percent). In some cases, Roma children represent more than half the student population in special schools. The rate of Roma students attending special schools is decreasing, but observers note that this remains a concern. Although the Ministry of Education and Science's new policy supports the downsizing of special schools, the process is slow. Many Roma children in these classes in fact do not demonstrate learning impairments [...].'²⁸⁴
A report by the Open Society Foundations states: '[...] 26 % of Roma children are educated in segregated settings, and around 50 % of students in remedial special schools are Roma.'²⁸⁵
3. Children in schools for juvenile delinquents (disproportionate representation). One report notes that 'Children and students belonging to the Roma minority are overrepresented in two types of special schools: the schools for children with developmental deficiencies and the schools for juvenile delinquents.'²⁸⁶

²⁸⁰ The FXB Centre for Health and Human Rights at Harvard University (2015), *Strategies and Tactics to Combat Segregation of Roma Children in Schools: Case studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria, and Greece*, p. 93, available at: <http://www.dare-net.eu/cms/upload/file/strategies-and-tactics-to-combat-segregation-Case-studies-english.pdf>.

²⁸¹ Open Society Foundations (2019), *Post-2020 EU Roma Strategy: The Way Forward*, p. 17, available at: <https://www.opensocietyfoundations.org/uploads/7004b0da-956d-4df9-a1f7-d889a00ae9d5/post-2020-eu-roma-strategy-the-way-forward-20190627.pdf>.

²⁸² 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)).

²⁸³ Among numerous authorities, see Fundamental Rights Agency (2014), *Roma survey – Data in focus: Education: the situation of Roma in 11 EU Member States*, available at: http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf.

²⁸³ The FXB Centre for Health and Human Rights at Harvard University (2015), *Strategies and Tactics to Combat Segregation of Roma Children in Schools: Case studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria, and Greece*, p. 191, available at: <http://www.dare-net.eu/cms/upload/file/strategies-and-tactics-to-combat-segregation-Case-studies-english.pdf>.

²⁸⁴ The FXB Centre for Health and Human Rights at Harvard University (2015), *Strategies and Tactics to Combat Segregation of Roma Children in Schools: Case studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria, and Greece*, p. 93, available at: <http://www.dare-net.eu/cms/upload/file/strategies-and-tactics-to-combat-segregation-Case-studies-english.pdf>.

²⁸⁵ Open Society Foundations (2019), *Post-2020 EU Roma Strategy: The Way Forward*, p. 17, available at: <https://www.opensocietyfoundations.org/uploads/7004b0da-956d-4df9-a1f7-d889a00ae9d5/post-2020-eu-roma-strategy-the-way-forward-20190627.pdf>.

²⁸⁶ RAXEN_CC National Focal Point Bulgaria (2004), *Analytical Report PHARE RAXEN_CC Minority Education*, available at: https://fra.europa.eu/sites/default/files/fra_uploads/272-edu-bulgaria-final.pdf, p. 11.

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 'compelled'.²⁸⁷ 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. However, 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.²⁸⁸

In 2020, the SCC effectively confirmed (by not admitting to cassation review) a decision by the Pazardzhik Regional Court (PRC) in a Roma segregation case.²⁸⁹ In 2019, the PRC had held that the element of 'compelled separation' in the PADA legal definition was to be construed in line with the ECtHR's case law, to the effect that separation is 'compelled' when it 'does not result from an individual's freely formed will, provided that all the prerequisites to form free will are present'. The Court held that 'the qualification "compelled separation" is not to be taken formally, as a mere absence of compulsion in the strict sense of the word, but instead as clarified by the ECtHR'.²⁹⁰ The PRC had, in turn, confirmed the first-instance court's decision, which had contained the same interpretation of racial segregation.²⁹¹ The SCC agreed, reproducing the interpretation verbatim.

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).²⁹² 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,²⁹³ the 'compelled' 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 'compelled' 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'.²⁹⁴ 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 'compelled' hurdle prevented any protection.²⁹⁵ In a case concerning the disproportionate representation of Roma

²⁸⁷ PADA, Additional Provision, § 1(6).

²⁸⁸ For instance, *D.H. v. Czech Republic*, No. 57325/00, 13 November 2007; *Sampanis v. Greece*, No. 32526/05, 5 June 2008; *Oršuš v. Croatia* [GC], No. 15766/03, 16 March 2010.

²⁸⁹ SCC, Ruling No. 80 of 14 February 2020 in Case No. 3932/2019.

²⁹⁰ Pazardzhik Regional Court, Decision No. 233 of 25 June 2019 in Case No. 315/2019.

²⁹¹ This judicial articulation is not necessarily representative of the level of reasoning of the domestic courts on the legal concept of segregation. The wording was derived verbatim from the *actio popularis* claim brought against the local general hospital by the author of this report concerning a practice of racial segregation in the hospital's maternity wards, consisting of separating Roma women in rooms where no Bulgarian majority women would be placed. Both the first-instance and appeals courts found, on the evidence, that the respondent had succeeded in rebutting any presumption of discrimination raised by the claimants. In particular, the hospital had engaged, *inter alia*, witnesses who testified that they had given birth in the hospital on more than one occasion and had shared rooms with Roma women.

²⁹² PSEA, Article 62(4) and Article 99(4) and (6).

²⁹³ 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).

²⁹⁴ Sofia City Court (SCtC), Decision of 27 February 2007, Civil Case No. 3139 of 2005. The Supreme Court of Cassation, the final-instance court, confirmed this decision in its Decision No. 723 of 1 August 2008, Civil Case No. 6402 of 2007.

²⁹⁵ Blagoevgrad Regional Court, Decision No. 139 of 1 December 2005 in Case No. 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.

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.²⁹⁶

The PADC did not specify the extent of the over-representation it found.²⁹⁷ In 2014, the FRA found that, in Bulgaria, the percentage of Roma children up to the age of 15 having attended a special school or class 'mainly for Roma' was 14 %.²⁹⁸ This figure does not include students older than 15. It includes not only students channelled into special schools but also students in segregated classes or schools, leaving the number of Roma children sent to special schools unclear.

In 2008, the Open Society Institute found that Roma children are 'often' enrolled in special schools, a 'large proportion' of them for 'purely social reasons', as a result of which they were 'over-represented'.²⁹⁹ In 2007, the Roma Education Fund found that the majority of children, or around two thirds, in special schools were Roma; in certain schools, the figure was between 90 % and 100 %.³⁰⁰ In 2004, the State Child Protection Agency found that minorities in schools, including Roma, represented 57.5 % of students in special schools.³⁰¹

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'.³⁰² 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'.³⁰³ (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

²⁹⁶ PADC, Decision No. 80 of 16 October 2007.

²⁹⁷ PADC, *Годишен отчет 2007 г. (Annual Report 2007)*, p. 79, available (in BG) at: http://www.kzd-nondiscrimination.com/layout/images/stories/pdf/annual_report_07.pdf.

²⁹⁸ Fundamental Rights Agency (2014), *Roma survey – Data in focus: Education: the situation of Roma in 11 EU Member States*, available at: http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf, p. 48.

²⁹⁹ Open Society Institute Sofia (2008), *Ромите в България (Roma in Bulgaria)* p. 32, available (in BG) at: https://osis.bg/wp-content/uploads/2018/04/OSI_Publication_Roma_2.pdf.

³⁰⁰ Roma Education Fund (2007), *Подобряване на образованието на ромите в България (Improving Roma education in Bulgaria)*, pp. 11, 31, available (in BG) at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

³⁰¹ Roma Education Fund (2007), *Подобряване на образованието на ромите в България (Improving Roma education in Bulgaria)* p. 31, available (in BG) at: https://www.romaeducationfund.org/wp-content/uploads/2019/05/bulgaria_report_bulgarian.pdf.

³⁰² 'Стратегия за образователна интеграция на децата и учениците от малцинствата (2015-2020)' ('Strategy for Educational Integration of Ethnic Minority Children and Students'), p. 8, available (in BG) at: <https://www.mon.bg/bg/143>.

³⁰³ 'Рамкова програма за интегриране на ромите в българското общество (2010-2020)' ('Framework Programme for Integration of Roma in Bulgarian Society'), p. 7, available (in BG) at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bq-BG&Id=609>.

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 six 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.³⁰⁴

There is no relevant recent case law on record.

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

In Bulgaria, national legislation prohibits discrimination in access to and the supply of goods and services, as formulated in the Racial Equality Directive.³⁰⁵ 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.

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 2020, the SCC effectively upheld (by not admitting to cassation review) a relevant decision by the Varna Regional Court (VRC).³⁰⁶ In 2019, in a case brought under the PADA, the VRC had ruled in favour of a blind person who had effectively been denied access to a health-related administrative service by the relevant public body, as he had been required to apply for the service in person (which was not possible due to his disability) and not via an authorised representative (his son) as he had requested.³⁰⁷ The SCC agreed with the lower court's qualification of the impugned practice as indirect discrimination.

In 2018, the SAC confirmed a relevant decision by the Sofia City Administrative Court, confirming a decision by the PADC.³⁰⁸ 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

³⁰⁴ PSEA, Article 16 and Article 178(1.3).

³⁰⁵ PADA, Article 6(1) and Article 37.

³⁰⁶ SCC, Ruling No. 394 of 8 May 2020 in Case No. 1094/2020.

³⁰⁷ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

³⁰⁸ SAC, Decision No. 6072 of 10 May 2018 in Case No. 1225/2017.

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 and banks) and those only available privately (e.g. those restricted to members of a private association).³⁰⁹

3.2.9 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.³¹⁰ The provision is general, implicitly including housing. It covers all five grounds.

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.³¹¹ As a result, the most vulnerable are at risk of homelessness.³¹²

a) Trends and patterns regarding housing segregation for Roma

In Bulgaria, there are patterns of housing segregation of the Roma. The majority of Roma live in segregated areas ('ghettos'). As segregation in general does not relate simply to legal issues, but can also be a de facto situation, the separation of Roma housing from the rest of the population constitutes segregation and, as such, a breach of fundamental rights.

As an inextricably linked – as opposed to separate – issue, the Roma in the segregated areas mentioned above have dire living conditions, including severely 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 running 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.

This deprivation of basic public services and security of tenure cannot be factually or conceptually extricated from the segregation of Roma areas. It would amount to a serious misunderstanding to believe that racialised collective forced evictions and (extreme) poverty are 'clearly distinguishable' and 'not to be mixed' with Roma racial segregation. It is because Roma areas are segregated that their residents can be, and are, kept in inhuman/degrading housing conditions and subjected to collective forced evictions that would not be conceivable with regard to any other ethnic group, and certainly not to the majority population.

³⁰⁹ PADA, Article 6(1) and Article 37.

³¹⁰ PADA, Article 6(1).

³¹¹ See UNHCR Bulgaria, 2016 report, p. 12, available (in BG) at: www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf.

³¹² See UNHCR Bulgaria, 2016 report, p. 12, available (in BG) at: www.unhcr.org/bg/wp-content/uploads/sites/18/2016/12/2016-AGD-PA-Report-Final-BG.pdf.

The seminal 2012 ECtHR decision against Bulgaria in *Yordanova and Others v. Bulgaria* (collective forced eviction threatening Romani community)³¹³ 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 is currently under enhanced supervision by the Committee of Ministers (CM) and the ECtHR.³¹⁴

In 2020, the Council of Europe Commissioner for Human Rights made a Rule 9.4 submission to the CM regarding the execution of the *Yordanova and Others* judgment, which Bulgaria has failed to implement.³¹⁵ In sum, the Commissioner asserted that the authorities should prevent forced evictions, tackle the stigmatisation and marginalisation of Roma and improve their access to adequate housing, including social housing. The Commissioner based her submission on her March 2020 report on Bulgaria, stressing that, in addition to seriously infringing the right to adequate housing, forced evictions potentially result in violations of various other human rights, therefore preventing them is essential. She pointed out that states have an obligation to limit the risk of human rights violations related to evictions and to ensure that the principles of proportionality and non-discrimination are respected in any eviction process. She submitted that the problem of evictions of Roma in Bulgaria can be effectively addressed only by tackling the widespread prejudice and institutional racism against Roma, and through structural changes in the area of housing rights. She reiterated her concerns about the numerous obstacles to Roma access to social housing, including public opposition at local level, which has led some municipalities to cancel construction projects. The Commissioner detailed necessary steps to prevent forced evictions in the light of international human rights standards.

Bulgaria's failure to execute the landmark *Yordanova and Others* judgment over the course of nearly a decade is, in the view of the author of this report, an issue of compliance with Directive 2000/43 in so far as a right to be protected from arbitrary race-based deprivation of one's long-standing only family home threatening infants, children and other vulnerable individuals with dire consequences, such as homelessness and the implied risks to personal integrity, basic utilities, access to healthcare and education and other vital services, is a matter of housing equality within the meaning of Article 2.2(a) and (b) in conjunction with Article 3.1(h) of the directive.

In the *Yuseinova and Others v. Bulgaria* case, eviction proceedings were brought against a number of Roma families.³¹⁶ The applicants' case 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. On 4 June 2019, the Court delivered an inadmissibility decision. During the proceedings, all but one of the applicants withdrew their complaints. It is not clear why they did so, although

³¹³ *Yordanova and others v. Bulgaria*. (The case was represented by the author of this report).

³¹⁴ See ECtHR, 'Country Factsheet: Bulgaria', available at: <https://rm.coe.int/1680709740>.

³¹⁵ See: <https://www.coe.int/en/web/commissioner/-/bulgarian-authorities-should-prevent-forced-evictions-tackle-the-stigmatisation-and-marginalisation-of-roma-and-improve-their-access-to-adequate-housi>.

³¹⁶ This case was represented by the author of this report.

their representative claimed it was a result of undue pressure from the authorities.³¹⁷ The Court, however, found that these applicants had withdrawn their applications and that respect for human rights did not require the Court to continue examining the cases. As for the remaining applicant, the Court found that he had submitted his application out of time.

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

³¹⁷ A note by the third-party intervener is available at: <http://www.errc.org/cikk.php?cikk=4997>.

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.³¹⁸ 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 [...].'

In 2020, there has been no relevant case law. In 2019, in a case brought under the PADA, the SAC ruled *ex officio* to make a reference for a preliminary ruling to the CJEU in a case brought by a blind person against a court chairperson and a judge for not appointing her to serve as a juror in criminal cases.³¹⁹ The Court's question to the CJEU was: Are the rules in Article 5(2) of the CRPD and in Articles 1(1-3) and 4(1) of Directive 2000/78/EC to be interpreted as allowing a blind person to participate in criminal trials as a juror, or is non-blindness a genuine and determining occupational requirement for a juror, whereby the exclusion of a blind person does not amount to disability discrimination? The case is still pending before the CJEU.

The facts are as follows: after the impugned denials of appointment, the electronic random assignment of cases was introduced, following which the complainant was able to serve as a juror. This was one of her arguments in the domestic proceedings: that it was shown by experience that she was capable of serving despite her disability. The respondent judges' defence was that the principles of immediacy (of evidence appraisal), of establishing the objective truth and of decision-makers' inner conviction in criminal trials implied that having sight was a genuine and determining occupational requirement for a juror. The PADC had ruled in the complainant's favour, finding that there was direct discrimination on the grounds of disability. On appeal, the lower court had confirmed the PADC's decision. The court had taken into account the fact that the complainant had been able to serve as a juror after having been randomly assigned once that was made possible, which meant that she could perform the job regardless of her disability.

The SAC ruled on the issue of a genuine and determining occupational requirement in a case where, under the applicable secondary legislation, applicants for service as police officers could not be older than 40 years.³²⁰ The Court found the maximum age requirement to be discriminatory as the Minister of the Interior, the respondent, had not submitted any proof that it was objectively justified as a necessary and proportionate means to pursue a legitimate aim.

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.³²¹ 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

³¹⁸ PADA, Article 7(1.2).

³¹⁹ SAC, Ruling of 25 July 2019 in Case No. 1084/2018.

³²⁰ SAC, Decision No. 11854 of 14 August 2019 in Case No. 10095/2018.

³²¹ PADA, Article 7(1.3).

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'.³²² 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 recorded instances (and no recorded case law) where this exception has resulted in discrimination on grounds of sexual orientation.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 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.³²³ It makes a significant exception, however, for differential treatment based on nationality provided for under primary legislation.³²⁴ 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.³²⁵ In Bulgaria, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law.³²⁶

In 2020, there has been no relevant case law.

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.³²⁷

4.5 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,³²⁸

³²² PADA, Article 7(1.4).

³²³ PADA, Article 4(1).

³²⁴ PADA, Article 7(1.1).

³²⁵ PADA, Article 7(1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

³²⁶ PADA, Article 4(1).

³²⁷ 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.

³²⁸ HSWCA, Article 16(1.2a).

considering the specific dangers for employees with reduced work capacity.³²⁹ 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.

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

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

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.³³⁰ For the other three exceptions, the PADA requires proportionality.³³¹

The first exception for age discrimination under the PADA, which is not subject to proportionality, is for pension ages, including occupational pensions.³³² The second exception not subject to proportionality is for measures and programmes under the Employment Promotion Act.³³³ 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.³³⁴

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;³³⁵ 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;³³⁶ and setting requirements for minimum and maximum age for access to training or education.³³⁷ The latter exception may fall within the scope of Directive 2000/78/EC as it implicitly applies to vocational training.

In 2018 (there being no cases in 2019 or 2020), the SAC justified a university's rule setting a maximum age for access to recruitment for a teaching post (associate professor; *доцент*).³³⁸ 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.

³²⁹ HSWCA, Article 16(1.3).

³³⁰ PADA, Article 7(1.8-9) and (1.12).

³³¹ PADA, Article 7(1.5-6) and (1.11).

³³² PADA, Article 7(1.8).

³³³ PADA, Article 7(1.9).

³³⁴ PADA, Article 7(1.12).

³³⁵ PADA, Article 7(1.5).

³³⁶ PADA, Article 7(1.6).

³³⁷ PADA, Article 7(1.11).

³³⁸ SAC, Decision No. 4159 of 30 March 2018 in Case No. 4591/2016.

b) 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.³³⁹

However, 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.³⁴⁰ The SAC regards taking seniority into account as different from taking age into account, ignoring the link between the two and not explaining 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 law.

In 2018, the SAC continued this tendency in at least two cases,³⁴¹ as did the SCC.³⁴² 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.

In 2019, the SAC held that dismissals of employees and civil servants who had become entitled to an old age and seniority pension were not discriminatory as, under the law, employers had discretion to dismiss such people.³⁴³ It was irrelevant that other employees with pension rights were not dismissed. The employer had discretion as to who among them to dismiss; there was no duty to select based on professional criteria.

In 2020, the SAC continued this line of reasoning, comparing dismissed persons with others with pension entitlements (as opposed to those without such entitlements, i.e. different age groups).³⁴⁴ In line with its established flawed case law on this issue, the SAC starkly differentiated the criterion of having acquired entitlement to a pension based on age and length of service from age as a protected ground, and held that having acquired pension rights was not a protected ground under the PADA.³⁴⁵ The SAC held that the concept of age as a protected ground under the PADA was different from the concept of age as an element of the entitlement to a pension based on age and length of service.³⁴⁶ None of these rulings discussed proportionality or any other justification; neither did they discuss indirect discrimination.

c) 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.³⁴⁷ 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

³³⁹ PADA, Article 4(2).

³⁴⁰ 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.

³⁴¹ 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.

³⁴² SCC, Ruling No. 368 of 18 May 2018 in Case No. 483/2017, Ruling No. 401 of 28 May 2018 in Case No. 1882018.

³⁴³ For instance, SAC, Decision No. 2711 of 25 February 2019 in Case No. 57042017; Decision No. 3922 of 18 March 2019 in Case No. 65162017; Decision No. 17303 of 17 December 2019 in Case No. 2461/2019.

³⁴⁴ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

³⁴⁵ SAC, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017.

³⁴⁶ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

³⁴⁷ PADA, Article 7(1.5-6, 8-9, 11-12 and 14-15).

requirements for the job, or to the need for a reasonable period of employment prior to retirement (proportionality test).

d) Fixing of ages for admission to occupational pension schemes

In Bulgaria, national law does not allow occupational pension schemes to set ages for admission to the scheme, 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.

Under the Social Security Code, the comprehensive legislation governing pensions, the only factor not allowed to be taken into account as a biometric risk/criterion in actuarial calculations is sex.³⁴⁸ Accordingly, age is a permissible factor and there are no restrictions on its use apart from the requirement that the underlying statistical data be reliable and up to date.

4.6.2 Special conditions for younger or older workers

In Bulgaria, there are special conditions set by law for older and younger workers in order to promote their vocational integration. According to the Labour Code, employees under 18 are entitled to special protection and an employer may assist young employees.³⁴⁹ While the minimum age for access to employment is 16 years,³⁵⁰ as an exception, 15 and 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,³⁵¹ among other requirements and safeguards. Similar requirements are provided as safeguards for 16 to 18-year-old employees.³⁵² 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.³⁵³ Employers are under a duty to take special care of employees under 18 by providing them with adapted conditions for work and vocational training.³⁵⁴ Employees under 18 may not work more than 35 hours a week or seven hours a day, including vocational training time.³⁵⁵ Such employees are entitled to no fewer than 26 working days of annual leave.³⁵⁶

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.³⁵⁷ 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.³⁵⁸ If the intern has a basic level of education or lower and no qualifications, the reimbursement period may extend to 12 months.³⁵⁹ 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.³⁶⁰

³⁴⁸ Social Security Code (*Кодекс за социалното осигуряване*), entered into force 1 January 2000, last amended 22 December 2020, Article 169(4) and Article 246(4).

³⁴⁹ Labour Code, last amended 6 November 2018, Article 294(6).

³⁵⁰ Labour Code, Article 301(1).

³⁵¹ Labour Code, Article 301(2).

³⁵² Labour Code, Article 303.

³⁵³ Labour Code, Article 304.

³⁵⁴ Labour Code, Article 305(1).

³⁵⁵ Labour Code, Article 305(3).

³⁵⁶ Labour Code, Article 305(4).

³⁵⁷ Employment Promotion Act, adopted 20 December 2001, last amended 13 March 2020, Article 36.

³⁵⁸ Employment Promotion Act, Article 41. An intern in this case is a person with professional qualifications but no work experience.

³⁵⁹ Employment Promotion Act, Article 41a.

³⁶⁰ Employment Promotion Act, Article 55a.

4.6.3 Minimum and maximum age requirements

In Bulgaria, there are exceptions permitting minimum and maximum age requirements in relation to access to employment 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.³⁶¹ 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.³⁶²

4.6.4 Retirement

a) State pension age

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

In Bulgaria, there is a state pension age at which individuals may begin to collect their pensions. The ages at which individuals become entitled to receive an old age pension are set by law. Age is not the only criterion for entitlement to such a pension. The number of years of service is taken into account too.³⁶³ For example, to be entitled to a retirement pension in 2020, a woman must be 61 years and six months old, and have 35 years and 10 months of service.³⁶⁴ If she does not have such a length of service, she must have a minimum service of 15 years and be 66 years and six months old.³⁶⁵ The relevant pensionable ages are different for women and men.³⁶⁶ There are also differences for certain professions and occupations and for the civil service.³⁶⁷ 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 wishes to work beyond the state pension age, 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 standard age at which 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 60.³⁶⁸ As an exception, they can start collecting their occupational pensions five years earlier, provided that this is set in a collective agreement.³⁶⁹ 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.

³⁶¹ PADA, Article 7(1.5).

³⁶² PADA, Article 7(1.6).

³⁶³ Social Security Code, Article 68.

³⁶⁴ National Social Security Institute: <https://www.noi.bg/pensions/grantpensions/1854-posv13>.

³⁶⁵ National Social Security Institute: <https://www.noi.bg/pensions/grantpensions/1854-posv13>.

³⁶⁶ 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.

³⁶⁷ Social Security Code, Articles 69-69c.

³⁶⁸ Social Security Code, Article 243(4).

³⁶⁹ Social Security Code, Article 243(6).

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 army³⁷⁰ and the police,³⁷¹ 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.

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. Retirement-relevant ages are governed by legislation, namely the Social Security Code (SCC) in the general case (state pension ages within the meaning of Section 4.6.4.a) above), or special laws, such as those applicable to the police and armed forces (within the meaning of Section 4.6.4.c) above). Neither the SCC retirement-relevant ages, nor those under special laws (police, army) constitute mandatory retirement ages. Under the SCC, those ages result in exposing people to possible discretionary dismissal; people will not be necessarily dismissed. Even if they are dismissed, they can seek and find employment elsewhere; they are not forced to retire and no longer work. Under special laws, the ages result in people being dismissed from their service but not forced into retirement; they remain eligible to work elsewhere.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any further 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 become entitled to such a pension.³⁷² That is to say, employers may not dismiss pensioners on other (unlawful) grounds, but may do so on this particular ground. 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 the grounds of becoming entitled to a pension.

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.³⁷³ In other words, employers can freely dismiss people whom they hired as pensioners, on the grounds of the latter being 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.³⁷⁴

³⁷⁰ 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, last amended 22 December 2020, 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.

³⁷¹ Ministry of the Interior Act, entered into force June 2014, last amended 2 October 2020, Article 226(1). The limit is 60 years.

³⁷² Labour Code, Article 328(1.10).

³⁷³ Labour Code, Article 328(1.10b).

³⁷⁴ Labour Code, Article 328(1.10a and 1.10c).

Additionally, professors, assistant professors and doctors of science (holders of PhDs) are subject to dismissal, at the employer's discretion, when they reach 65 years.³⁷⁵ They still nominally retain employment rights, but they effectively have no protection against dismissal on age grounds. In the CJEU *Georgiev* case (C-250/09), 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 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.

Professors, assistant professors and doctors of science (holders of PhDs) would be exempted (protected) from such an age-based dismissal if 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).³⁷⁶

Similarly, civil servants are subject to dismissal on grounds of having become entitled to a pension.

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.

In all the cases outlined above, following a dismissal on grounds of pension entitlement, an individual may take up other employment. 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 2020, as well as in 2019, the courts continued to rule that this does not amount to age discrimination.³⁷⁷

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. As stated above, in all cases, the people concerned can seek alternative employment.

The compatibility with the directive of domestic legislation allowing dismissal on grounds of age/retirement entitlement was scrutinised in joined Cases C-250/09 and C-268/09, *Vasil Ivanov Georgiev v. Tehnicheski universitet*. The Court reiterated that a legislation's (underlying) aim of intergenerational balance might be legitimate. Domestic judicial interpretation would be required to establish whether this is, in fact, the aim pursued by this legislation.

³⁷⁵ Labour Code, Article 328(1.10).

³⁷⁶ Labour Code, Article 328(1.10).

³⁷⁷ For instance, SAC, Decision No. 5412 of 8 May 2020 in Case No. 13176/2018, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020; SCC, Ruling No. 541 of 12 June 2020 in Case No. 592/2020; Sofia City Court, Decision No. 260749 of 23 October 2020 in Case No. 6374/2020. SAC, Decision No. 2711 of 25 February 2019 in Case No. 5704/2017; Decision No. 3922 of 18 March 2019 in Case No. 6516/2017; SCC, Ruling No. 497 of 19 June 2019 in Case No. 881/2019.

In *Georgiev*, the Court stressed the relevance of the fact that the legislation is not based solely on a specific age, but 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*).³⁷⁸

While it is true that in *Georgiev*, the relevant age was five years higher than the then general retirement age, which the Court expressly noted, 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. Moreover, in the meantime, the general retirement age for men has been raised, and from 2020 it is 64 years and three months,³⁷⁹ i.e. almost the same as in *Georgiev* (65 years).

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 legislation was clearly different from that examined in *Mangold*³⁸⁰ and appeared to be capable of being justified as the age in question (as of 2019, the generally applicable age was circa 61 for women and circa 64 for men) was higher than that in *Mangold* (which was 52), and also 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 that the Court recognises states have in choosing their social and employment policy aims and the means by which to pursue them, judicial interpretation might be required to establish whether this legislation is out of line with the directive.

4.6.5 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.³⁸¹ 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.³⁸² 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.³⁸³ 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).³⁸⁴

³⁷⁸ Judgment of 12 January 2010, *Petersen v. Berufungsausschuss für Zahnärzte für Den Bezirk Westfalen-Lippe*, C-341/08, EU:C:2010:4.

³⁷⁹ National Social Security Institute: <https://www.noi.bg/pensions/grantpensions/1854-posv13>.

³⁸⁰ Judgment of 22 November 2005, *Mangold v. Helm*, C-144/04, EU:C:2005:709.

³⁸¹ Labour Code, Article 329(1).

³⁸² Labour Code, Article 328(10).

³⁸³ Labour Code, Article 328(10a).

³⁸⁴ Labour Code, Article 328(10).

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.³⁸⁵ 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.³⁸⁶ 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.

4.7 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.

4.8 Any other exceptions

In Bulgaria, another exception to the prohibition of discrimination (on any ground covered by this report) 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.³⁸⁷

³⁸⁵ Labour Code, Article 222(3).

³⁸⁶ Labour Code, Article 222(1).

³⁸⁷ 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.

Several specific authorisations for positive action exist:

- different treatment of people with disabilities in training or education aimed at equalising their opportunities;³⁸⁸
- 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;³⁸⁹
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and people with disabilities;³⁹⁰
- 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;³⁹¹
- 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.³⁹²

The PADA not only permits but mandates, in a general way, positive measures to equalise opportunities for disadvantaged groups. Under Article 10 of the PADA, state and local government authorities, when carrying out their powers, are under a duty to take all measures necessary for the attainment of the aims of the PADA. The PADA places a general duty on all authorities to take measures to equalise opportunities for disadvantaged groups,³⁹³ as well as to guarantee participation by ethnic minorities in education, whenever necessary to accomplish the objectives of equality law.³⁹⁴ Under Article 11, the PADA requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.³⁹⁵ However, no such measures are on record.

Under the PADA, employers are under a duty to promote job applications from less-represented ethnic groups where necessary to achieve the aims of the PADA.³⁹⁶ Furthermore, when other conditions are equal, employers are under a duty to promote the career development and participation of employees from less-represented ethnic groups.³⁹⁷

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 2020, the SAC confirmed a 2018 decision by the SCAC, which had repealed a decision by the PADC, which in turn had upheld positive measures for Roma students.³⁹⁸ The PADC had found the Minister of

³⁸⁸ PADA, Article 7(1.10).

³⁸⁹ PADA, Article 7(1.14).

³⁹⁰ PADA, Article 7(1.15).

³⁹¹ PADA, Article 7(1.16).

³⁹² PADA, Article 7(1.17). The law does not specify the measures allowed. Any measure falling into this category is accepted.

³⁹³ As of 2020, there are no examples of where measures have been taken to equalise opportunities for LGBT individuals, among other vulnerable groups.

³⁹⁴ PADA, Article 11(1).

³⁹⁵ PADA, Article 11(2).

³⁹⁶ PADA, Article 24(1).

³⁹⁷ PADA, Article 24(2).

³⁹⁸ SAC, Decision No. 458 of 13 January 2020 in Case No. 5375/2019; SCAC, Decision No. 7471 of 10 December 2018 in Case No. 9628/2018.

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.

The SCAC had considered the measure to be directly discriminatory against non-Roma people. The SCAC had 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 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.

On appeal by the Centre for Educational Integration of Ethnic Minority Children and Students and the PADC, the SAC explicitly validated this reasoning.

This judgment is not 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). It did not discuss the ICERD provision on positive action measures.

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

In 2020, the SAC upheld the positive duties of public authorities under Articles 10 and 11 of the PADA – to take all measures necessary to pursue the equality aims of the legislation – in a health rights/disability case, in which the respondent public body had denied a child with an oncological condition a financial opportunity to receive treatment in another country.³⁹⁹ The child had subsequently passed away. The PADC had found that the impugned refusal was a violation of the competent body's duties under Articles 10 and 11 of the PADA. Based on this decision, the lower court had then awarded the child's parents non-pecuniary damages. The SAC upheld the latter decision.

In another disability rights case heard under Articles 10 and 11 of the PADA, the SAC upheld the lower court's decision, which in turn had confirmed the PADC's decision.⁴⁰⁰ The PADC had found that the Capital Municipal Council (the Sofia City local government) had failed to implement a provision of a piece of secondary legislation adopted by the Council

³⁹⁹ SAC, Decision No. 11441 of 3 September 2020 in Case No. 12748/2019.

⁴⁰⁰ SAC, Decision No. 155 of 7 January 2020 in Case No. 13509/2018.

itself, which provided for independent living assistance to children with disabilities – the Council had failed to budget sufficient monies, which had resulted in the practical impossibility of providing the services in question to all children meeting the requirements under the relevant provision; a number of children were instead placed on ‘waiting lists’. The PADC had issued a recommendation to the authorities to secure the necessary funds. The SCAC had, on appeal, found that the service in question constituted a positive measure to overcome inequalities and its shortage constituted a breach of the positive duties under the PADA, as effective implementation of those duties required all persons in the relevant category to be able, in practice, to access the service. The existence of other positive measures for the relevant category of persons did not exempt the Council from this duty of adequate (comprehensive) provision.

In 2018, the SAC, in the case of the dismissal of a civil servant along the lines of *Petya Milkova* (Case C-406/2015), 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.⁴⁰¹ 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.

In 2020, the SAC continued this line of case law in at least six other cases.⁴⁰²

b) Quotas in employment for people with disabilities

In Bulgaria, national law provides for quotas for the employment of people with disabilities. According to the Labour Code, employers with more than 50 employees are under a duty to annually set aside 4-10 % of their jobs as suitable to accommodate people with disabilities, *inter alia*.⁴⁰³ ‘Accommodating’ here means assigning current employees or new recruits with disabilities to jobs that are suitable for their altered or reduced working capacity. ‘Accommodating’ is based on official indications by the relevant medical-administrative bodies that certify/assess people with disabilities. Being ‘accommodated’ as per such an official indication is not equivalent to having one’s disability/reduced working capacity assessed/certified. Setting aside jobs as suitable for accommodating people with disabilities is not equivalent to actually hiring as many such people as there are such jobs. Jobs suitable for accommodating employees who have a disability may be taken by people without disabilities – while there are not enough people with disabilities to take them all. In such cases, as soon as there is a new recruit with a disability and with an ‘accommodating’ indication, a person without a disability who has a job suitable for ‘accommodating’ will lose their job, and it will be taken by the new recruit. Therefore, the employer is obliged to appoint a disabled candidate who is qualified and cannot decline to appoint them on the ground that a non-disabled person is already employed in the function. In that sense, jobs set aside for accommodating are placed at the disposal of people with disabilities with an official accommodating indication. The employer has no duty to actually find people with disabilities to be the job holders.

Under the Labour Code, there is no explicit provision to the effect that these jobs may be taken by people outside the employer’s organisation, including people who were not previously employed. However, the situation is such in practice. Where a job applicant with

⁴⁰¹ SAC, Decision No. 4151 of 30 March 2018 in Case No. 494/2015.

⁴⁰² SAC, Decision No. 2691 of 19 February 2020 in Case No. 8622/2019, Decision No. 5031 of 28 April 2020 in Case No. 14469/2019, Decision No. 1204 of 27 January 2020 in Case No. 5536/2019, Decision No. 1825 of 5 February 2020 in Case No. 7044/2019, Decision No. 1559 of 20 August 2020 in Case No. 85/2020, Decision No. 7237 of 11 June 2020 in Case No. 2895/2020.

⁴⁰³ Labour Code, Article 315(1).

a disability is qualified to take an adapted job, they will be hired if there is such a 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 EUR 7 500 (BGN 1 500 and BGN 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-EUR 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 recent years),⁴⁰⁴ 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.⁴⁰⁵ 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.⁴⁰⁶ Authorities with more than 50 staff are bound to designate at least 2 % of all positions for people with long-term disabilities.⁴⁰⁷ Authorities with between 26 and 50 staff must designate at least one position.⁴⁰⁸ Candidates for these positions compete only with other people with disabilities.⁴⁰⁹ 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.⁴¹⁰

The People with Disabilities Act (PDA) introduced additional 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 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 2020,

⁴⁰⁴ Since the repeal of the Integration of People with Disabilities Act on 1 January 2019, employers are no longer obliged to inform the Agency for People with Disabilities (APD) of the number of jobs set aside for people with permanent or other disabilities. Accordingly, the APD no longer aggregates such data. The General Labour Inspectorate (GLI) does not collect or possess such data either. The GLI has no information of such data being available from another source. All of this information was provided by the GLI to the author of this report on 26 April 2021.

⁴⁰⁵ Available at: <http://ahu.mlsp.government.bg/portal/document/51085> (in BG).

⁴⁰⁶ Civil Servant Act, entered into force 28 August 1999, Article 9a.

⁴⁰⁷ Civil Servant Act, Article 9a(1.1).

⁴⁰⁸ Civil Servant Act, Article 9a(1.2).

⁴⁰⁹ Civil Servant Act, Article 9a(1.2).

⁴¹⁰ Civil Servant Act, Article 9a(1.3).

BGN 610 (EUR 305)). This means that an employer may avoid (the risk of) being fined by opting to pay monthly compensation.

The 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.⁴¹¹
- Judicial proceedings before the administrative courts for public sector respondents (under case law).⁴¹²
- Specialised quasi-judicial proceedings before the PADC, the independent equality body, with judicial review by two instances of administrative courts.⁴¹³ This is complemented by a follow-up procedure for damages before the courts (administrative courts for public-law respondents and civil courts for others).⁴¹⁴

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.⁴¹⁵ 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.⁴¹⁶ However, for a number of years, the case law has failed to respect this and parties have been ordered to pay each other's costs on losing. On top of that, the PADC has been successfully seeking costs when complainants appeal against

⁴¹¹ PADA, Article 71.

⁴¹² For instance, SAC, Ruling No. 10400 of 3 August 2018 in Case No. 12325/2017.

⁴¹³ PADA, Articles 47, 50, and 68(1).

⁴¹⁴ PADA, Article 74.

⁴¹⁵ 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 10 000.

⁴¹⁶ PADA, Article 53 and Article 75(2).

its decisions before the administrative court.⁴¹⁷ Where complainants are unsuccessful, the court has been ordering them to pay the PADC staff attorneys' fees. The supposed reason that the courts have ignored the PADA's exemption of litigants from costs is that, under this legislative rule, costs should be recuperated from courts' budgets.

However, in 2019, at long last, the SAC explicitly recognised that the PADA, as *lex specialis*, provides for a special rule on fees and costs, and parties are therefore exempt from both.⁴¹⁸ Nevertheless, this ruling has not settled the issue, as in other cases the SAC has continued to award costs and demand court fees at the expense of the parties.⁴¹⁹ In 2020, the SAC continued to confirm costs awards by lower courts to the detriment of losing parties.⁴²⁰ It turned down a request to make a preliminary reference to the CJEU on this issue. However, the Court recognised at least that court fees are not due.⁴²¹ The Sofia City Court ruled that costs are due too.⁴²²

Litigants are free to represent themselves in both judicial and PADC procedures.⁴²³ Before the Supreme Court of Cassation a complaint only needs to be signed by a lawyer⁴²⁴ 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 contradictions in respect of the competent courts in discrimination cases against public authorities, cases which were heard by a civil court have on appeal been remanded to an administrative court, and vice versa, to start all over again, for no reason other than the courts' contradictory construction of competence rules in such cases.⁴²⁵ This breaches litigants' rights to proceedings of a reasonable length.

While the PADA is 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 SCC and the SAC 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.⁴²⁶

However, in 2017-2018, the contradictions persisted. In 2017, in at least three cases, the SAC 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

⁴¹⁷ The PADC bases this practice on an interpretative ruling (*тълкувателно решение*) by the SAC – 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).

⁴¹⁸ SAC, Ruling of 4 July 2019 in Case No. 6182/2019.

⁴¹⁹ SAC, Ruling No. 7627 of 21 May 2019 in Case No. 7982/2017, Ruling of 18 July 2019 in Case No. 5927/2019.

⁴²⁰ SAC, Decision No. 5733 of 18 May 2020 in Case No. 6405/2019.

⁴²¹ SAC, Decision No. 5733 of 18 May 2020 in Case No. 6405/2019, Ruling No. 5206 of 30 April 2020 in Case No. 3194/2020.

⁴²² SCtC, Ruling No. 261593 of 2 December 2020 in Case No. 12501/2019.

⁴²³ 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.

⁴²⁴ Civil Procedure Code (*Граждански процесуален кодекс*), Article 284(2).

⁴²⁵ For instance, SAC, Ruling No. 10400 of 3 August 2018 in Case No. 12325/2017.

⁴²⁶ Interpretative Decree 2/2014 of 19 May 2015.

competent in all other cases.⁴²⁷ 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.⁴²⁸ 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.

In 2019, the SCC and the SAC again jointly issued an interpretative ruling, reversing the ruling from 2015. Under the 2019 ruling, in all cases of alleged discrimination in which no PADC proceedings had taken place prior to the filing of a claim with the court, whether against private or public bodies, the civil courts were competent, whereas the administrative courts were competent only to hear claims for compensation following a PADC ruling establishing discrimination on the part of a public body.⁴²⁹ In 2020, the Sofia City Court confirmed that the civil courts are competent to hear claims against public bodies, as well as all other claims in cases in which the party did not resort to the PADC.⁴³⁰

The time limit for the civil court remedy is the general limit for civil cases – five years. For the PADC remedy, it is three years. In 2019, in a case in which a complainant had first brought proceedings before the PADC and then, after obtaining a finding of discrimination, had filed a court claim for compensation based on that finding, the SCC problematically held that the period of five years to file a court claim ran from the breach, and the bringing of PADC proceedings had not stopped it, wherefore it had long elapsed and the claim was inadmissible.⁴³¹ Effectively, this means that, contrary to the PADA, complainants are barred in practice from claiming compensation in cases in which they go to the PADC first, as the period of five years will likely always have elapsed by the time a PADC decision becomes final (there being two instances of judicial review of PADC decisions). However, in 2020, the Sofia City Court upheld a decision by the lower civil court, which had awarded compensation to a discrimination victim based on a PADC decision from 2012, i.e. six years later, and for the appeals court, more than seven and a half years later.⁴³²

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. No evidence is available on whether the hostile environment might sometimes prevent Roma/LGBT litigants from taking cases for fear of negative exposure.

Possible additional reasons that LGBT and other minority activists may prefer litigation against hate speech could be that such litigation is less complicated and less costly in terms

⁴²⁷ 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.

⁴²⁸ For instance, SAC, Ruling No. 10400 of 3 August 2018 in Case No. 12325/2017.

⁴²⁹ Interpretative Decree No. 1 of 16 January 2019.

⁴³⁰ SCtC, Decision No. 261079 of 9 November 2020 in Case No. 15323/2019.

⁴³¹ SCC, Ruling No. 219 of 14 March 2019.

⁴³² SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

of time and other resources. In cases of hate speech, there is no issue with proving the facts, as public statements are documented by the media. There is, furthermore, no relationship within which the litigant might face repercussions, as would be the case in an employment or education situation, for example. The principal reason to prioritise hate speech litigation remains the fact that sufficiently severe group negative stereotyping impairs group members' sense of self, as has been recognised by the ECtHR.⁴³³

c) Number of discrimination cases brought to justice

In Bulgaria, statistics on the number of cases related to discrimination brought to justice are available. However, these statistics are not comprehensive, adequately disaggregated, harmonised or updated and may feature unclear overlaps, as well as gaps. Statistics are available for the SCAC, hearing PADC-decided cases on appeal as a first instance, as well as discrimination claims against public bodies. In 2020, 85 such cases were filed with the SCAC (out of 3 760 cases in total filed with the relevant chamber of the court, the one dealing *inter alia* with PADA cases).⁴³⁴ No statistics are available for the number of PADA cases decided.

There are no statistics for the Supreme Administrative Court hearing PADC cases on judicial review as a final instance.⁴³⁵ 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 the first half of 2019, 133 cases were initiated under the PADA.⁴³⁶ In addition, at the beginning of 2019, there were 248 PADA cases pending from the previous period. Altogether, 381 new and previously filed PADA cases were pending in the first half of 2019. In that period, 65 PADA cases were resolved. In four of these, the claim was fully upheld; in six cases, the claim was partially upheld; and in 11 cases, the claim was dismissed. Forty-three cases were terminated (on admissibility grounds); one was settled; and 35 decisions were appealed.

According to Supreme Court of Cassation (SCC) statistics, in 2018, eight PADA cases were brought with that court – six claims for a declaration of discrimination and two claims for compensation.⁴³⁷

In 2019, the SCC reported an increase in claims to establish discrimination nationally.⁴³⁸ The aggregated SCC data for all the courts in the country in 2019 showed that 140 new PADA cases were instituted; there were in total 186 incoming cases and 435 pending cases; and 153 cases were resolved. There were nine cases in which the claim was upheld in its entirety; 12 cases in which the claim was partially upheld; and 36 cases in which the claim was dismissed. There were 96 cases terminated, two of them settled; 282 cases remained pending at the end of 2019; and 76 decisions were appealed.⁴³⁹

⁴³³ See, *inter alia*, the judgments in the cases of [Aksu v. Turkey](#) and, after the cut-off date for this report, [Behar](#) and [Budinova](#) against Bulgaria. For analysis of the Court's judgments in general hate speech cases, see M.S. Ilieva, 'The Rights of Others in Cases of Othering', *Strasbourg Observers*, April 2021.

⁴³⁴ See report (in BG) on the activities of Sofia City Administrative Court in 2020 (*Доклад за дейността на Административен съд София-град през 2020 г.*), available at: <http://www.admincourtsfia.bg/LinkClick.aspx?fileticket=ErdOUffDvZM%3d&tabid=252>.

⁴³⁵ Telephone interview with the Court's Head Statistician, 23 April 2015; Supreme Administrative Court, activity report for 2017, available (in BG) 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); see also: http://www.vss.justice.bg/root/f/upload/24/2019-09-24_SK-VSS-t38.pdf (Annex No. 111).

⁴³⁶ Supreme Judicial Council Aggregated Statistical Tables on the Courts' Activities for 2019.

⁴³⁷ Supreme Court of Cassation (2018), 'Statistical Data for 2017', p. 25, available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2018-prilozhenie2.pdf>.

⁴³⁸ Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019.pdf>.

⁴³⁹ Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019-prilozhenie1.pdf>.

In the SCC's own docket of PADA cases in 2019, there were 15 claims to find discrimination (compared with six in 2018 and four in 2017), and five claims for compensation (compared with two in 2018 and five in 2017).⁴⁴⁰

There are no data for 2020 yet.

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. Considerable delays occurred in 2012-2014. 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 panel's 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.⁴⁴¹ The PADC initiated *ex officio* proceedings on 386 occasions (mostly to do with architectural inaccessibility) and rendered 511 decisions altogether.⁴⁴²

In 2019, the PADC received 921 complaints and third-party motions, and instituted 920 sets of proceedings. It initiated 601 *ex officio* cases and rendered 627 decisions. It provided assistance to victims in 1 160 instances.⁴⁴³

There are no data for 2020 yet.

d) Registration of national court decisions on discrimination

In Bulgaria, court decisions on discrimination 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 in proceedings 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.⁴⁴⁴ Before the civil courts, trade unions and legal persons operating for non-profit purposes registered in the public interest may represent victims.⁴⁴⁵ Legal persons operating for non-profit purposes are foundations or associations.⁴⁴⁶ Those which

⁴⁴⁰ Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019-prilojenie2.pdf>.

⁴⁴¹ 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>.

⁴⁴² 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>.

⁴⁴³ PADC (2019) *Годишен отчет за 2019 г. (Annual Report 2019)*, p. 14, available at (in BG): <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf>. It is unclear whether these numbers relate exclusively to 2019, as the accompanying statement is ambiguous and refers to complaints and third-party motions from the previous year as well.

⁴⁴⁴ Administrative Procedure Code (*Административнопроцесуален кодекс*), last amended 18 November 2018, Article 18(2).

⁴⁴⁵ PADA, Article 71(2).

⁴⁴⁶ Legal Persons for Non-profit Purposes Act (*Закон за юридическите лица с нестопанска цел*), last amended 18 December 2020, Article 1(2).

self-identify as acting in the public interest register with the Ministry of Justice.⁴⁴⁷ They are subject to stricter requirements.⁴⁴⁸ Arguably, a non-profit organisation which is not 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.⁴⁴⁹

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 proceedings 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.⁴⁵⁰ 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.⁴⁵¹ 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.⁴⁵² 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.

On the other hand, in 2020, the SAC heard a case brought by a conservative NGO against pro-Roma positive measures; the NGO had appealed against the PADC decision, which had dismissed its claims. On appeal by this NGO, the SCAC had heard the case, and repealed the PADC's decision. The SAC confirmed the SCAC decision rather than annul it as having been rendered in an inadmissible case (as would have been implied had it considered that the NGO lacked standing to appeal against the PADC decision).⁴⁵³ The case law is, therefore, contradictory.

⁴⁴⁷ Legal Persons for Non-profit Purposes Act, Article 2(1 and 3).

⁴⁴⁸ Legal Persons for Non-profit Purposes Act, Chapter 3.

⁴⁴⁹ Legal Persons for Non-profit Purposes Act, Article 38(1) – specifies which activities qualify as public interest ones.

⁴⁵⁰ PADA, Article 71(2).

⁴⁵¹ PADA, Article 50(3).

⁴⁵² 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.

⁴⁵³ SAC, Decision No. 458 of 13 January 2020 in Case No. 5375/2019.

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.

In 2020, the courts decided a number of public interest cases brought by activists and NGOs.⁴⁵⁴ This was the case in 2018-2019 as well.⁴⁵⁵

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.⁴⁵⁶ Such claims can be brought on behalf of *all* victims of a single violation where their 'circle cannot be exactly defined but is definable'.⁴⁵⁷ 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.⁴⁵⁸ 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.⁴⁵⁹

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 (Article 386(1)). 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.

⁴⁵⁴ For instance, SCC, Ruling No. 80 of 14 February 2020 in Case No. 3932/2019; SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020, Decision No. 10495 of 30 July 2020 in Case No. 5792/2020.

⁴⁵⁵ For instance, SCAC, Decision No. 7471 of 10 December 2018 in Case No. 9628/2018.

⁴⁵⁶ Civil Procedure Code, Article 379.

⁴⁵⁷ Civil Procedure Code, Article 379(1).

⁴⁵⁸ Civil Procedure Code, Article 380(3).

⁴⁵⁹ Civil Procedure Code, Article 379(2-3).

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 any form of discrimination, where the claimant produces (presents) facts from which an *inference* that discrimination is present can be made.⁴⁶⁰

Implementation of the rule on shifting the burden of proof is rudimentary. While judges and the PADC 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's implications in practice. 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 SAC found that sex was the reason for the less favourable treatment on grounds that the respondent failed to establish a legitimate reason.⁴⁶¹

In 2020, the SAC made a holding of concern: 'It is submitted in the cassation appeal that the harassment [...] was based on his ethnicity "as there is no other explanation". To establish discrimination by presumption, in the absence of evidence, is inadmissible.'⁴⁶² In a different case, the SAC also held that the PADA provision on the shifting burden of proof (Article 9) did not exempt the PADC from its duty under general administrative procedure law to gather evidence *ex officio*.⁴⁶³ The SCC effectively validated a decision by the lower court (by not admitting it to review), in which the latter had held that the situational testing evidence adduced by the claimants was sufficient to infer discrimination.⁴⁶⁴

In 2019-2020, the SCC repeatedly ruled: 'Where discrimination is claimed, the primary burden of proof is on the claimant. They have to prove the facts based on which it is warranted to presume that they have been discriminated against. Only then does the law shift the burden of proof onto the respondent to prove the reverse [...] The case law is consistent that a claimant's failure to bear the onus of proof that the law assigns them is a sufficient reason to dismiss the claim.'⁴⁶⁵

In 2020, the Sofia City Court problematically held as follows: 'After the claimant proves facts of harassment against him [...] there is a probability that he was the object of direct discrimination [...] [T]he burden of proof shifts onto the respondent to prove that the right to equal treatment was not violated. The latter fails to conduct successful evidencing, which is why the claim [under] PADA to declare the violation is warranted.'⁴⁶⁶

In 2019, the SAC ruled: '[The impugned treatment] is not linked to disability. Even if it is accepted that [the complainant] succeeded in creating a presumption of unequal treatment, this presumption within the meaning of Article 9 PADA has been categorically rebutted in the proceedings, as it has been established that the difference in treatment (non-appointment) in comparison with the similarly situated comparators is not due to the protected ground of disability but to an objective difference [...].'⁴⁶⁷ The Court made a similar analysis in at least one other case, using the phrase 'prima facie presumption'.⁴⁶⁸ In two other cases, it used an even more appropriate formulation: 'In PADC proceedings pursuant to the imperative rule of Article 9 PADA, the complainant is to provide proof that

⁴⁶⁰ PADA, Article 9.

⁴⁶¹ SAC, Decision No. 274 of 9 January 2012 in Case No. 1319/2011.

⁴⁶² SAC, Decision No. 10369 of 28 July 2020 in Case No. 10512/2019.

⁴⁶³ SAC, Decision No. 9387 of 13 July 2020 in Case No. 14464/2019.

⁴⁶⁴ SCC, Ruling No. 80 of 14 February 2020 in Case No. 3932/2019.

⁴⁶⁵ For instance, SCC, Ruling No. 466 of 27 May 2020 in Case No. 188/2020, Ruling No. 497 of 19 June 2019 in Case No. 881/2019; Ruling No. 595 of 22 July 2019 in Case No. 109/2019.

⁴⁶⁶ SCtC, Decision No. 261079 of 9 November 2020 in Case No. 15323/2019.

⁴⁶⁷ SAC, Decision No. 4284 of 22 March 2019 in Case No. 10891/2017.

⁴⁶⁸ SAC, Decision No. 4659 of 28 March 2019 in Case No. 10268/2017.

gives rise to a warranted presumption of possible discrimination against them based on the stated protected ground.⁴⁶⁹

However, in another case, the SAC used different, problematic language: 'According to Article 9 of the PADA, the party claiming to be a victim of discrimination must prove facts that give rise to a conclusion that discrimination is at hand. And only once discrimination has been proven, the respondent party has to prove that the principle of equal treatment has not been breached.'⁴⁷⁰

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.⁴⁷¹ For the rule on shifting the burden of proof, the court relied on Article 14 of the 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 of the ECHR and on the PADA.⁴⁷²

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.⁴⁷³ 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 based not on the PADA but on the Territory Planning Act (judicial review of administrative eviction orders).⁴⁷⁴

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.⁴⁷⁵ 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.⁴⁷⁶ 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.⁴⁷⁷ Therefore, any person who assists any action against discrimination in any way is entitled to protection from victimisation.

In 2020, the SCAC rendered a restrictive interpretation: 'The disciplinary sanction [...] cannot be considered victimisation due to the complaint to the PADC. That would be to deny the employer's right to conclude a disciplinary proceeding against an employee who complains against him to the PADC under threat that continuing [such disciplinary proceedings] would be considered a form of victimisation under the PADA. This is not the

⁴⁶⁹ SAC, Decision No. 11184 of 18 July 2019 in Case No. 79/2018, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

⁴⁷⁰ SAC, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017.

⁴⁷¹ SAC, Decision No. 356 of 10 January 2018 in Case No. 8993/2016.

⁴⁷² SAC, Decision No. 363 of 10 January 2018 in Case No. 9234/2016.

⁴⁷³ SAC, Decision No. 4159 of 30 March 2018 in Case No. 4591/2016.

⁴⁷⁴ SAC, Decision No. 14889 of 4 December 2018 in Case No. 7354/2018.

⁴⁷⁵ PADA, Article 5.

⁴⁷⁶ PADA, Additional Provision § 1(3).

⁴⁷⁷ PADA, Additional Provision § 1(3).

aim of the [relevant] provisions. Their aim [...] is to protect an employee from actions by the employer taken after the complaint was lodged, on novel grounds'.⁴⁷⁸ This case concerned harassment in the workplace on grounds of (non-religious) belief and social status. In the opinion of the author of this report, the particular 'beliefs' at stake in this case are arguably not relevant under the directive – they concerned the employee's professional legal opinions in terms of her interpretation of the applicable domestic law for the purposes of her work assignments as head of the respondent's legal department; her supervisor disagreed with (some of) her legal views, which was allegedly why he allegedly disadvantaged her. That clarified, the reasoning is nevertheless relevant to the implementation of the directives, as the PADA provides uniform standards across its comprehensive set of protected grounds, including ones (arguably) not protected by EU law. Accordingly, the above interpretation of victimisation is possibly applicable to EU-protected grounds as well – if this interpretation were to become established.

The Sofia City Court, in a libel case (criminal proceedings), confirmed the judgment of the lower court, which had acquitted the accused – a former employee who had lodged a complaint of harassment and discriminatory dismissal (on race and religious grounds) against her employer with the PADC.⁴⁷⁹ Her employer had then accused her of libel against him. Both the first and second instance courts held that the accused had exercised her constitutional right to complain by bringing a case before the PADC. The SCtC held that the aim pursued by the complaint was determinative – if it was to defend impaired rights as opposed to inflicting damage on the party, that could not be libel. The SCtC referred to the SCC's case law to the effect that a complaint that is eventually proven to be based on false facts is not a violation, as it is founded on rights under the Constitution to lodge complaints and applications and to defend oneself without threat of repression. The Court failed to refer to the concept of victimisation with regard to the employer's libel action.

In 2018 (there being no 2019 cases on record), the Sofia City Court confirmed a decision by the Sofia District Court upholding a claim by an equal rights activist that a TV host had victimised him by using his show to disparage him, impairing his reputation, in response to PADC proceedings brought by the activist against the journalist for hate speech on the part of the latter.⁴⁸⁰ The journalist was ordered to publish the decision in a daily newspaper chosen by the claimant and to abstain from further victimising him in any manner, as well as being ordered to pay him compensation for non-pecuniary damages to the amount of BGN 1 500 (EUR 750). In this case, the claimant was subjected to adverse treatment/adverse consequences as a reaction to his having brought a complaint before the PADC, thereby initiating PADC proceedings aimed at enforcing compliance with the right not to be discriminated against as provided by the directives. The adverse treatment the claimant was subjected to consisted of his being publicly denigrated on television, including by being vilified as a 'snitch' for having filed a complaint against the journalist responsible for alleged discrimination.

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 (EUR 125) and BGN 2 000 (EUR 1 000) (for individuals) or BGN 2 500 (EUR 1 250) (for legal persons), amounts that would arguably be dissuasive to the majority of individuals and small enterprises.⁴⁸¹ 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

⁴⁷⁸ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019.

⁴⁷⁹ SCtC, Decision No. 374 of 12 June 2020 in Case No. 2760/2019.

⁴⁸⁰ SCtC, Decision of 20 December 2018 in Case No. 1476/2018.

⁴⁸¹ PADA, Articles 78-80.

compensation but go to the PADC budget.⁴⁸² Where a breach is repeated, the sanction is doubled.⁴⁸³ 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.⁴⁸⁴ 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 for individuals (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.⁴⁸⁵ 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) Compensation – maximum and average amounts

There is no maximum amount of compensation.⁴⁸⁶ 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 (SCC) 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.⁴⁸⁷ In 2019, the SCC reversed previously settled case law that in no cases, including discrimination cases, can legal persons incur, or claim, non-pecuniary damages.

In 2020, the Sofia City Court upheld claims of multiple harassment (ethnicity and sexual orientation) and awarded compensation for each strand of harassment: BGN 3 000 (EUR 1 500) for the racist statements, and BGN 2 500 (EUR 1 250) for the homophobic statements.⁴⁸⁸ The difference in the awards was due to several factors, including the incidence of the comments (made on, respectively, one occasion and two occasions) and the context (the target's place of study, the PADC proceedings, on television). The SCtC confirmed the lower court's decision, which had held that the impugned conduct was such – inherently deleterious – that proving the non-pecuniary damages sustained was unnecessary; those were instead to be presumed.

In 2019, the Varna Regional Court held that discrimination per se equated to damages incurred, without a claimant having to prove such damages.⁴⁸⁹ The court awarded BGN 1 500 (EUR 750) to a blind person who had been denied access to a healthcare-related administrative service via an authorised representative (his son) – the competent public authority had required him to file the relevant application himself.

⁴⁸² PADA, Article 83.

⁴⁸³ PADA, Article 81.

⁴⁸⁴ PADA, Article 76.

⁴⁸⁵ PADC, Decision No. 450 of 20 November 2018 in Case No. 180/2017.

⁴⁸⁶ 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.

⁴⁸⁷ 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.

⁴⁸⁸ SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

⁴⁸⁹ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

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 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.

In 2019, the SAC ruled that the PADC has no authority to issue injunctions to public bodies, only to private natural and legal persons.⁴⁹⁰ Vis-à-vis public bodies that are found to have discriminated, the PADC has the authority only to make recommendations. See further detail in Section 3.1.3.b).

⁴⁹⁰ SAC, Decision No. 15498 of 14 November 2019 in Case No. 3959/2018.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body 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 of 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.⁴⁹¹ 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 2 570 000 (EUR 1 285 000) in 2018,⁴⁹² it reached BGN 2 784 000 (EUR 1 392 000) in 2019.⁴⁹³ In 2020, it was BGN 2 969 400 (EUR 1 484 700).⁴⁹⁴ At the same time, the PADC stated that three of its regional offices were no longer operational due to a lack of the funds needed to staff them.⁴⁹⁵ According to the PADC, at that time, the 21 operational PADC regional offices were each staffed by a single employee.⁴⁹⁶ In four of the country's 28 regions, the PADC had yet to establish a regional office, allegedly not having the means to secure local office space.⁴⁹⁷ Where PADC regional offices do exist, they were hosted in the respective regional governor's offices (rather than in facilities of the PADC's own).⁴⁹⁸ As of 2020, it is not established what the position is in respect of those issues.

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.

Under the PDA, the PADC takes part in the newly established Monitoring Council under the law. The Monitoring Council ensures that Bulgaria implements the CRPD (PDA, Article 11). The PADC's chairperson appoints two of the Council's nine members (PDA, Article 12(1)). The PADC's and the Ombudsman's respective administrations alternate in servicing the Council's administration, each for terms of two years (PDA, Article 12(4)). The Council prepares: opinions and recommendations to public bodies to prevent and abort violations of the rights of people with disabilities; periodic reviews and assessments of national

⁴⁹¹ See media reports at: www.dnes.bg/politika/2018/05/17/v-ns-ima-li-smisyl-ot-komisiyata-po-diskriminacia.376733.

⁴⁹² State Budget Act 2018, Article 29.

⁴⁹³ State Budget Act 2019, Article 28.

⁴⁹⁴ State Budget Act 2020.

⁴⁹⁵ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁹⁶ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁹⁷ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

⁴⁹⁸ Official PADC information officially provided to the author of this report on 16 February 2018 under access to public information legislation.

legislation and bills, and practice in terms of compliance with the CRPD; and annual reports on the actions undertaken to implement the CRPD (PADA, Article 14).

Furthermore (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).⁴⁹⁹ 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 Interior. The PADC then uses their data to fill in the relevant OSCE questionnaire annually.⁵⁰⁰

In addition, the PADC is an 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.⁵⁰¹ 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]'.⁵⁰² 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.⁵⁰³

d) Status of the designated body – general independence

i) Status of the body

The PADC is a collegiate body consisting of nine members, including at least four lawyers.⁵⁰⁴ Under the law, it manages its own budget, part of the state budget.⁵⁰⁵ It is expressly defined as having its own legal personality.⁵⁰⁶ 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

⁴⁹⁹ See: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1355-2019-02-19-15-14-36>.

⁵⁰⁰ See, *inter alia*, PADC, *Annual Report 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.

⁵⁰¹ 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>.

⁵⁰² 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>.

⁵⁰³ 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>.

⁵⁰⁴ PADA, Article 41(1).

⁵⁰⁵ PADA, Article 40(3).

⁵⁰⁶ PADA, Article 40(3).

unfettered and non-transparent. The 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. PADC members have a five-year term of office.⁵⁰⁷ The PADC adopts its own regulations to govern its activities and structure, including its administration's competences and numbers.⁵⁰⁸ In accordance with its own regulations, the PADC chairperson establishes the structure of PADC's administration and the job descriptions of its employees.⁵⁰⁹ S/he appoints, promotes and dismisses employees⁵¹⁰ and contracts external experts.⁵¹¹ The PADC is accountable to Parliament only. Under the law, it reports annually in writing to Parliament on its activities.⁵¹²

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.⁵¹³ It informs the public about equality law provisions and carries out other activities as stipulated in its own regulations.⁵¹⁴

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'.⁵¹⁵ 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.⁵¹⁶ 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

⁵⁰⁷ PADA, Article 41(2).

⁵⁰⁸ PADA, Article 46.

⁵⁰⁹ 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).

⁵¹⁰ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9(6).

⁵¹¹ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9(7).

⁵¹² PADA, Article 40(5).

⁵¹³ PADA, Article 47.

⁵¹⁴ PADA, Article 47.

⁵¹⁵ PADA, Article 40(1).

⁵¹⁶ Information officially provided by the PADC to the author of this report on 16 February 2018.

is true of PADC regional 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.⁵¹⁷ 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.⁵¹⁸ 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.⁵¹⁹

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.⁵²⁰ 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 according to no clear set of criteria, and arguably not proportionately in favour of the main vulnerable communities. It has clearly prioritised accessibility (disability) issues at the expense of other crucial issues, such as the segregation of Roma children in school. 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. It has not concerned itself with the failed implementation of the ECtHR's *Yordanova and Others* judgment. 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.⁵²¹ 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

⁵¹⁷ Information officially provided by the PADC to the author of this report on 16 February 2018.

⁵¹⁸ Information officially provided by the PADC to the author of this report on 16 February 2018.

⁵¹⁹ PADC, Article 4(1).

⁵²⁰ Information provided by the PADC to the author of this report on 16 February 2018.

⁵²¹ PADC, Article 47(9).

assistance to victims shall entail. While the PADC has powers under the PADA to collect evidence *ex officio*, including in proceedings brought by complainants,⁵²² 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.⁵²³ 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.⁵²⁴ 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.⁵²⁵ 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.⁵²⁶ 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.⁵²⁷

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).⁵²⁸ 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.⁵²⁹ 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.⁵³⁰ In 2019, it reported having provided assistance in 1 160 cases.⁵³¹

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

⁵²² PADA, Articles 55-57.

⁵²³ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 20(1.1).

⁵²⁴ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 23(2.1).

⁵²⁵ Information provided by the PADC to the author of this report on 16 February 2018.

⁵²⁶ PADC replies to questions from the author of this report, 16 February 2018.

⁵²⁷ PADC replies to questions from the author of this report, 16 February 2018.

⁵²⁸ PADC replies to questions from the author of this report, 16 February 2018.

⁵²⁹ PADA, Article 52.

⁵³⁰ PADC (2018) *Годишен отчет за 2018 г. (Annual Report 2018)*, p. 7, available (in BG) at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵³¹ PADC (2019) *Годишен отчет за 2019 г. (Annual Report 2019)*, p. 14, available (in BG) at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf>.

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.⁵³²

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 has reported only five studies over the course of its existence (under the law, as of 2004; in practice, as of 2005).⁵³³ Those studies mostly contain sociological data on prejudices against various vulnerable groups.⁵³⁴

As a whole, the PADC studies and their findings 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 2012,⁵³⁵ 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, дето 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 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'.⁵³⁶

⁵³² PADA, Article 47(10-11).

⁵³³ 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).

⁵³⁴ PADC information officially provided to the author of this report on 16 February 2018.

⁵³⁵ Available at: www.kzd-nondiscrimination.com/layout/images/stories/izsledwane_na_kzd/KZD-reshenie.doc.

⁵³⁶ See media reports, *inter alia*, at: www.dnevnik.bg/bulgaria/2012/08/14/1887858_sergeri_ignatov_bottev_ostava_v_uchebnicite/;

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.⁵³⁷ 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.⁵³⁸ The PADC is also competent to issue injunctions, to public and private actors alike.⁵³⁹

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.⁵⁴⁰ 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 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

https://www.dnevnik.bg/bulgaria/2012/08/16/1889323_kabinetut_posegatelstvoto_vurhu_istoriata_e_zapla/.

⁵³⁷ 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>.

⁵³⁸ PADA, Article 47(6), 47(8) and 47(11).

⁵³⁹ PADA, Article 42(2-4).

⁵⁴⁰ PADC information officially provided to the author of this report on 16 February 2018.

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.⁵⁴¹ 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.⁵⁴² It is also competent to take and join court cases.⁵⁴³ The PADC is further competent to provide opinions on draft legislation and policy,⁵⁴⁴ keep a public register of its decisions and injunctions,⁵⁴⁵ inform the public of equality law provisions⁵⁴⁶ and undertake other activities as stipulated under its own regulations.⁵⁴⁷

g) Legal standing of the designated body/bodies

In Bulgaria, the designated body has 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, for example, as an *amicus curiae*.⁵⁴⁸

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 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.⁵⁴⁹ PADC decisions are subject to judicial review before two instances of administrative courts, including the Supreme Administrative Court.

⁵⁴¹ For instance, SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

⁵⁴² PADA, Article 47(1-4).

⁵⁴³ PADA, Article 47(5).

⁵⁴⁴ PADA, Article 47(8).

⁵⁴⁵ PADA, Article 47(7).

⁵⁴⁶ PADA, Article 47(12).

⁵⁴⁷ PADA, Article 47(13).

⁵⁴⁸ 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.'

⁵⁴⁹ Under Article 78(1) of the PADA, the maximum fine for a breach of equality law is BGN 2 000 (EUR 1 000).

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.⁵⁵⁰ In response, some parties send PADC financial evidence that they have paid their fine⁵⁵¹ 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).⁵⁵² 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.⁵⁵³ 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.⁵⁵⁴ 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.⁵⁵⁵ 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.⁵⁵⁶

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.⁵⁵⁷

In its 2018 report, the PADC has provided, as the only information on the implementation of its decisions, three examples of cases in which the respondents notified the PADC of having implemented its decisions concerning them.⁵⁵⁸ The report contains no information on steps taken by the PADC itself. Similarly, the examples given in the PADC's 2017 report

⁵⁵⁰ See PADC, *Годишен отчет за 2017 г. (Annual Report for 2017)*, p. 156, available (in BG) at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2.2017.pdf>.

⁵⁵¹ PADC, *Годишен отчет за 2016 г. (Annual Report for 2016)*, pp. 137-139, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D1%82%D1%87%D0%B5%D1%82%202016.pdf.

⁵⁵² PADC, *Годишен отчет за 2016 г. (Annual Report for 2016)*, pp. 137-139, available 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 2015)*, pp. 81-83, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁵⁵³ PADC, *Годишен отчет за 2015 г. (Annual Report for 2015)*, pp. 81-83, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁵⁵⁴ PADC, *Годишен отчет за 2015 г. (Annual Report for 2015)*, pp. 81-83, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁵⁵⁵ PADC, *Годишен отчет за 2014 г. (Annual Report for 2014)*, pp. 74-79, available at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

⁵⁵⁶ PADC, *Годишен отчет за 2014 г. (Annual Report for 2014)*, pp. 74-79, available at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

⁵⁵⁷ PADC, *Годишен отчет за 2014 г. (Annual Report for 2014)*, pp. 74-79, available at: http://kzd-nondiscrimination.com/layout/images/stories/2015/godishenotchet2014/Otchet_2014.pdf.

⁵⁵⁸ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, pp. 60-62, available at: <https://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bq.pdf>.

are of four cases in which the respondents notified the PADC of implementation.⁵⁵⁹ In only one of those cases, the PADC reports having sent the respondent an invitation for voluntary implementation.

In its 2019 report, the PADC stated that it stressed the exercising of implementation control, and as a result was able to record the highest percentage of fines paid to date – a ‘record’ amount of BGN 18 900 (EUR 9 450) (including court fees).⁵⁶⁰ The PADC furthermore received 68 written notices of measures implemented by respondents in execution of PADC injunctions. It sent 41 invitations for implementation.

Data for 2020 is not yet available.

As there are no statistical data on the rates of implementation of PADC decisions, it is unclear whether or to what extent its decisions are respected in practice.

i) Registration by the body 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 report 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.⁵⁶¹

In 2018, the PADC received 600 complaints and *actio popularis* motions and instituted 721 proceedings.⁵⁶² The PADC initiated *ex officio* proceedings on 386 occasions and rendered 511 decisions altogether.⁵⁶³ Disability was an alleged ground of discrimination in 459 proceedings, age in 51 proceedings and ethnicity in 28 proceedings.⁵⁶⁴ In 181 cases, disability was the only alleged ground and in 20 cases, age was the only alleged ground.⁵⁶⁵ There was one sexual orientation case.⁵⁶⁶ In six race/ethnicity cases, the PADC found discrimination; it rejected 12 such complaints and dismissed six on procedural grounds.⁵⁶⁷ In 2018, the PADC decided five cases related to religion.⁵⁶⁸ In 2018, the PADC rejected 116 multiple discrimination allegations and found multiple discrimination in 57 cases; it dismissed 52 such allegations on procedural grounds.⁵⁶⁹

⁵⁵⁹ PADC, *Годишен отчет за 2017 г. (Annual Report for 2017)*, pp. 156-157, available at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/%D0%9E%D0%A2%D0%A7%D0%95%D0%A2.2017.pdf>.

⁵⁶⁰ PADC (2019) *Годишен отчет за 2019 г. (Annual Report 2018)*, p. 102, available (in BG) at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf>.

⁵⁶¹ PADA, Article 47(7).

⁵⁶² PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 7, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶³ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 7, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁴ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 11, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁵ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 29, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁶ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 29, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁷ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 14, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁸ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 20, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

⁵⁶⁹ PADC, *Годишен отчет за 2018 г. (Annual Report for 2018)*, p. 33, available at: <http://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2018-bg.pdf>.

In 2019, the PADC received 921 complaints and third-party motions, and instituted 920 sets of proceedings; it initiated 601 *ex officio* cases and rendered 627 decisions.⁵⁷⁰

The data for 2020 is not yet available.

j) 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.⁵⁷¹ 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.).

⁵⁷⁰ PADC (2019) *Годишен отчет за 2019 г. (Annual Report 2019)*, p. 14, available at (in BG): <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf>. It is unclear whether these numbers relate exclusively to 2019, as the accompanying statement is ambiguous and refers to complaints and third-party motions from the previous year as well.

⁵⁷¹ 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,⁵⁷² the numbers of complaints and third-party motions, the prevalence of certain protected grounds or fields, the number of decisions, including precedents⁵⁷³ and the possibilities for individuals to be assisted centrally and regionally.⁵⁷⁴ 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 and 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 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) Compliance of national legislation (Articles 14(a) and 16(a))

Bulgaria has not taken the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

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

⁵⁷² Letter No. 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

⁵⁷³ Letter No. 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

⁵⁷⁴ Letter No. 12-10-34 of 13 July 2015 addressed to the Bulgarian Helsinki Committee.

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 respect the aim of not allowing any direct or indirect discrimination when drafting legislation, as well as when applying it.⁵⁷⁵ 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.⁵⁷⁶ 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.

In 2019, the case law was still contradictory in terms of whether the PADC or the courts can declare a legal norm discriminatory in PADA proceedings. For instance, the SAC and the SCC quite positively jointly held that every administrative act, including a piece of secondary legislation, is unlawful if it is discriminatory, and a discriminatory administrative act gives rise to standing to claim protection before the administrative court, including for damages resulting from the said act.⁵⁷⁷ The SCC separately ruled that, to find discrimination, established inequality was relevant, regardless of whether it was according to legal norms as the PADA aims at finding and sanctioning all inequality.⁵⁷⁸ The Varna Regional Court ruled similarly.⁵⁷⁹ However, in at least two other cases, the SAC held that the impugned treatment could not be discriminatory as it was based on the applicable law.⁵⁸⁰

In 2020, no decisions are on record (relevant to the protected grounds covered by this report) that contradict the PADA's applicability to legislation.

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.⁵⁸¹ On the other hand, the same court has established as its settled case law, following *Petya Milkova* (Case C-406/15), 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.⁵⁸² Other examples of 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,⁵⁸³ and a number of cases where the SAC declared secondary legislation excluding certain categories of patients from fully-funded treatment for their diseases discriminatory,⁵⁸⁴ as well as other secondary legislation in breach of disability equality

⁵⁷⁵ PADA, Article 6(2).

⁵⁷⁶ PADA, Article 10.

⁵⁷⁷ SAC and SCC, joint Ruling No. 28 of 2 April 2019 in Case No. 5A/2019.

⁵⁷⁸ SCC, Ruling No. 424 of 31 May 2019 in Case No. 919/2019.

⁵⁷⁹ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

⁵⁸⁰ SAC, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 8325 of 4 June 2019 in Case No. 45/2019.

⁵⁸¹ SAC, Decision No. 4159 of 30 March 2018 in Case No. 4591/2016.

⁵⁸² 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.

⁵⁸³ PADC, Decision No. 144 of 28 March 2018 in Case No. 28/2018.

⁵⁸⁴ 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 on 'Case law' below.

rights.⁵⁸⁵

There are various rules in primary and secondary legislation that arguably contradict PADA.⁵⁸⁶ A major effort is required to ensure that all laws and regulations are brought into conformity with the principle of equality.⁵⁸⁷

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Bulgaria has not taken the necessary measures to ensure compliance with Article 14(b) of Directive 2000/43 and Article 16(b) of Directive 2000/78 – ensuring that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations that are contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

Legal action would have to be taken in each individual case in which such rules/clauses contradict the PADA in order to have the court declare them null and void, or otherwise unlawful (but not amend them – that would have to be done by the party or parties that adopted them in the first place).

⁵⁸⁵ SAC, Decision No. 7706 of 11 May 2018 in Case No. 4602/2018.

⁵⁸⁶ 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*) (<https://lex.bg/laws/ldoc/2133647361>) (in BG); 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.

⁵⁸⁷ 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 Government), 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.⁵⁸⁸ 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.⁵⁸⁹ 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.⁵⁹⁰ 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.⁵⁹¹ It develops and funds projects promoting equal access to education for ethnic minority students.⁵⁹² It fundraises from donor institutions and receives a subsidy from the Ministry of Education's budget.⁵⁹³

Under the PDA, a Monitoring Council has been established, 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 People with Disabilities, has been established within the Council of Ministers. 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.

The Agency for People with Disabilities, an executive body within the Ministry of Labour and Social Policy (MLSP), takes part in coordinating the policy on the rights of people with disabilities, and is charged with specific duties, such as maintaining a database of people with disabilities.⁵⁹⁴

⁵⁸⁸ 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, available (in BG), at: www.lex.bg/laws/ldoc/2135541318.

⁵⁸⁹ Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues, Article 2(1.5), available at: www.lex.bg/laws/ldoc/2135541318.

⁵⁹⁰ See: https://iisda.government.bg/ras/executive_power/council/222 (in BG).

⁵⁹¹ Decree N 4 of the Council of Ministers of 11 January 2005 establishing the CEICSEM, Article 1.

⁵⁹² Decree N 4 of the Council of Ministers of 11 January 2005, Article 2.

⁵⁹³ Decree N 4 of the Council of Ministers of 11 January 2005, Article 9.

⁵⁹⁴ PDA, Article 10(3).

Within the MLSP, the Policy for Persons with Disabilities, Equal Opportunities and Social Assistance Directorate develops policy and programmes for vulnerable groups.⁵⁹⁵ At the MLSP, there is also a Social Inclusion Directorate.⁵⁹⁶

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 have been no social movements to address this situation.

There is no national action plan on anti-racism or anti-discrimination.

⁵⁹⁵ Information on the Ministry of Labour and Social Policy's website, available (in BG) at: www.mlsp.government.bg/index.php?section=POLICIESI&lang=eng&I=306.

⁵⁹⁶ Administrative Registry, State Administration Information System, available (in BG) at: http://iisda.government.bg/ras/executive_power/ministry_organigram/87?verId=181203000000038001.

10 CURRENT BEST PRACTICES

Since 2018, the PADC has been operating its self-initiated 'Accessible Bulgaria' campaign, monitoring the physical accessibility of public and commercial places by means of *ex officio* inspections and encouraging email and telephone inaccessibility reports by any party. As of October 2018, the PADC had inspected 538 sites and found 60 to be accessible.⁵⁹⁷ For the remaining 478 sites, the PADC had initiated proceedings to find and sanction discrimination. There were 165 cases against banks and insurance companies; 149 against state and municipal institutions; 89 against mobile network companies; and 75 against other service providers, mostly pharmacies and post offices. The majority of inaccessible sites were in Sofia (66 proceedings), followed by Lovech (30), Varna (26) and Burgas (22). Several dozen banks, mobile network providers and other companies built an accessible environment on their physical sites before the PADC ruled in the proceedings brought against them. The PADC has been rewarding accessible places by giving them visibility in the media, awarding them accessibility certificates and promoting their practices with the support of domestic celebrities. In 2020, at least 20 judicial decisions were delivered in *ex officio* PADC cases brought against entities, both public and private, that were found to operate inaccessible premises, within the framework of the PADC's 'Accessible Bulgaria' campaign. For the most part, the courts have confirmed the PADC's decisions finding discrimination in such cases. In some of those cases, the respondents have rectified their impugned practices (repaired their premises); occasionally, this was done while the proceedings were still pending.

As a separate instance of best practice, in 2020 the PADC initiated public consultations in several cities, as well as online, on a draft National Strategy to Counter Discrimination.⁵⁹⁸ The consultations involved local government officials, educators, business, NGOs and trade unions. There is no information on whether all the protected grounds were represented or covered. The text of this draft strategy has not been published.

Additionally, in December 2020, the PADC held a national round-table event (online) to discuss a draft National Strategy to Counter Discrimination in the Labour Market.⁵⁹⁹ This event was held under the framework of a joint project implemented by the PADC and the Ministry of Labour and Social Policy. The text of this draft strategy has not been published.

There are no good practices to report in relation to tackling discrimination caused by artificial intelligence (AI) systems.

⁵⁹⁷ PADC (2018), *Interim Report on the Implementation of the 'Accessible Bulgaria' Campaign*, available at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/%D0%BC%D0%B5%D0%B6%D0%B4%D0%B8%D0%BD%D0%B5%D0%BD%20%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%20%D0%BE%D0%BA%D1%82%D0%BE%D0%BC%D0%B2%D1%80%D0%B8%202018.pdf>.

See PADC announcements at: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1581-2020-10-12-11-27-42>, <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1602-2020-11-30-13-56-10>, <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1585-2020-10-20-13-24-12>.

See a PADC announcement at: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1617-2020-12-22-13-51-46>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

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 'compelled'.⁶⁰⁰ This is arguably in breach of the directives' definitions of direct discrimination, which have no 'compelled' element but instead outlaw any race-based less favourable treatment. Since *Brown v. Board of Education* (1954), when the racist 'separate but equal' doctrine was defeated, it has been established in discrimination/human rights law/legal theory that racial segregation is a form of less favourable treatment, i.e. discrimination. The 1965 UNCERD Convention bans all forms of racial segregation (Article 3). In its 1995 General Recommendation No. 19, the CERD Committee clarified that this ban applies to 'all forms of racial segregation in all countries', with 'the obligation to eradicate all practices of this nature include[ing] the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State'. The Committee observed that 'a condition of partial segregation may also arise as an unintended by-product of the actions of private persons': 'In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatised, and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.' The Committee therefore affirmed that 'a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities'. Failing to outlaw all racial segregation is additionally in breach of Article 2(1) of Directive 2000/43/EC, which prohibits *all* discrimination. Similarly, the ECtHR has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.⁶⁰¹ While opinions differ as to whether housing segregation is banned under the directive, it seems undisputed that segregation in education, including 'non-coercive' segregation, is banned. The issue being pointed out here is that, under the PADA, 'non-coercive' racial segregation is exempted in any field (including in the field of education), which is at variance with international discrimination law.
- The PADA defines indirect discrimination in an unclear, confusing way, thwarting implementation. The definition is not sufficiently clear to ensure consistent interpretation in line with EU law – it has instead resulted in contradictory case law (with some rulings demonstrating a correct approach to the concept, and others at variance with the directives).

Case law

- In breach of the *Firma Feryn*⁶⁰² principle that no actual individual victim is required for discrimination to be found, recent case law has required one

In 2019, the two supreme courts – the SAC, the final instance court for reviewing PADC decisions, and the Supreme Court of Cassation, the final instance court for PADA civil court cases – ruled in cases of anti-Roma hate speech that, in order for harassment or incitement to discrimination to be found, the claimant needs to have been specifically targeted and

⁶⁰⁰ PADA, Additional Provision, § 1(6).

⁶⁰¹ For instance, *D.H. v. Czech Republic*, No. 57325/00, 13 November 2007; *Sampanis v. Greece*, No. 32526/05, 5 June 2008; *Oršuš v. Croatia* [GC], No. 15766/03, 16 March 2010.

⁶⁰² Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, EU:C:2008:155.

affected by the impugned statements.⁶⁰³ 'Abstract' statements, targeting an unidentified circle of persons, including a racial, ethnic or religious community, are not 'harassment' or any other form of discrimination. Discrimination requires a specific victim. Lower courts rendered similar decisions.⁶⁰⁴

In line with this restrictive 'specific victim' trend, in 2020, the SAC held that extremely offensive anti-Roma public statements by a Deputy Prime-Minister did not constitute harassment as they did not target a specific individual.⁶⁰⁵ The SAC took this position in a similar Roma negative stereotyping case against the Prosecutor General.⁶⁰⁶

These decisions contravene ECtHR's hate speech case law, including *Aksu v. Turkey*, which has recognised that negative group stereotyping is capable of violating individuals' Convention rights without targeting those individuals.⁶⁰⁷ The domestic case law is also in breach of the *Firma Feryn* ruling that wholesale discriminatory statements are outlawed regardless of whether an individual victim is identified. While the *Firma Feryn* case concerned employment specifically, the PADA, being a comprehensive law, is not limited to the scope of the directives and therefore expressly applies to overarching anti-minority statements, as explained elsewhere in this report, in so far as such statements meet its definition of harassment. By virtue of its all-embracing nature, such expression includes/affects the fields covered by the directive. The case law described above as problematic has resisted a finding of harassment not for reasons of scope, as scope is not an issue under the universally applicable PADA, but for reasons involving the impugned speech lacking a specific target. Such problematic case law would equally apply in the field of employment under the PADA, as well as in other fields not covered by the directives, as the PADA governs discrimination, including harassment, in the same manner in all fields, including those covered by the directives and those beyond the latter's scope.

The problematic decisions described above have precedents. In 2014, the SAC held that a concrete discrimination victim needs to be identified.⁶⁰⁸ Discrimination has to be a concrete fact and not a hypothetical possibility.

While other decisions in 2019 and in the past, including by the SAC and the SCC, have recognised PADA violations where categories of people and not specific individuals were targeted, the problematic decisions discussed above are bound to have an influence on future cases. The case law is inconsistent and unreliable.

- Breach of Article 2(1) of Directive 2000/43/EC and Article 2(1) of Directive 2000/78/EC prohibiting *all* discrimination, as well as Article 7(1) of Directive 2000/43/EC and Article 9(1) of Directive 2000/78/EC requiring protection for *all* victims. This involves three categories of fallacies, discussed below as, respectively, A, B, and C

⁶⁰³ SCC, Decision No. 2 of 19 June 2019 in Case No. 3203/2018; Decision No. 819 of 29 November 2019 in Case No. 2596/2019; SAC, Decision No. 636 of 15 January 2019 in Case No. 7229/2018; SAC, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

⁶⁰⁴ SCAC, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019 – a case concerning an anti-Roma newspaper publication.

⁶⁰⁵ SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020.

⁶⁰⁶ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

⁶⁰⁷ See also [Behar and Gutman](#) and [Budinova and Chaprazov](#). At the cut-off date for this report, these cases concerning facts dating from 2005 were pending before the ECtHR. The cases were decided after the cut-off date, on 16 February 2021. The Court found that the domestic courts had breached their positive duties to protect victims of general hate speech against ethnic minorities, which had targeted no specific individual. (The cases were represented by the author of this report.) For analysis of the judgments, see M.S. Ilieva, 'The Rights of Others in Cases of Othering', *Strasbourg Observers*, April 2021.

⁶⁰⁸ 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.

A. Case law has introduced various restrictions regarding discriminatory norms, also affecting the principles of the primacy and effectiveness of EU equality law (due teleological construction of national law)

The SAC has made a number of holdings contradicting EU law (as well as the PADA), which have not been revoked as of 2020 and therefore still have relevance as mentioned below:⁶⁰⁹

- 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 has not been 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).

In 2019, the SAC, in at least two cases, held that the impugned treatment could not be discriminatory as it was based on the applicable law, i.e. denying discrimination provided for under legislation.⁶¹⁰ On the other hand, inconsistently, the SAC and the SCC jointly held, also in 2019, that every administrative act, including a piece of secondary legislation, is unlawful if it is discriminatory, and a discriminatory administrative act gives rise to standing to claim protection before the administrative court, including for damages resulting from the said act.⁶¹¹ The SCC separately ruled, in another instance, that, to find discrimination, established inequality was relevant, regardless of whether it was according to legal norms as the PADA aims at finding and sanctioning all inequality.⁶¹² The Varna Regional Court ruled similarly.⁶¹³ The case law, therefore, is contradictory as to whether discrimination provided for under legislation is banned by the PADA.

As of 2019, while the problematic case law referenced above has not become settled, it has not been conclusively recalled either. The conflicting trends do not appear to be necessarily ground- or field-specific. Some of the restrictive decisions exhibited anti-Roma bias. Other did not seem to be triggered by a particular ground.

In 2020, there has been no reiteration of the above fallacies (as concerns the protected grounds covered by this report and the case law of the two supreme courts). However, this is not necessarily a reliable outcome. There is a non-negligible probability that the problematic precedents outlined above will resurface in the coming years.

B. Misinterpretation of the due causality in cases where a protected ground played a causative part along with other reasons (mixed-reasons cases)

The SAC has repeatedly breached the mixed reasons standard, holding that the reason for unequal treatment must 'in all cases be a protected ground'.⁶¹⁴ The SCAC has copied that

⁶⁰⁹ 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.

⁶¹⁰ SAC, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 8325 of 4 June 2019 in Case No. 45/2019.

⁶¹¹ SAC and SCC, joint Ruling No. 28 of 2 April 2019 in Case No. 5A/2019.

⁶¹² SCC, Ruling No. 424 of 31 May 2019 in Case No. 919/2019.

⁶¹³ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

⁶¹⁴ SAC, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018.

approach.⁶¹⁵ In one case, the SAC held that age was 'only one of a series of criteria' for the impugned treatment, denying discrimination on this basis, among other reasons.⁶¹⁶

However, in a 2019 case, the SAC correctly stated that 'it is enough to establish that [a protected] ground constitutes a basic, meaningful reason for less favourable treatment'.⁶¹⁷ The case law is contradictory. In 2020, these contradictions have persisted. The SAC held that alleged unequal treatment must 'be based solely and only' on a protected ground,⁶¹⁸ arguably excluding cases where a protected ground was at play among other reasons.

C. Misinterpretation of the lacking requirement for intent in cases where unconscious bias was at play or other perceived motives for the impugned behaviour – the 'no intent required' standard

In cases concerning various grounds, the SAC and the SCC, as well as lower courts, have held that in order for discrimination to be found, different treatment had to be 'conscious'.⁶¹⁹ The SAC has failed to find discrimination as, *inter alia*, the treatment was not proven to be 'conscious'.⁶²⁰ See Sections 2.2 a) and 2.4 a) for further detail.

The SCC has similarly neglected the 'irrelevance of intent' principle. Importantly, in a case in which the lower court had found no discrimination as the treatment was not intentional, and the complainant had applied for cassation review, asking the SCC to specifically address the question of the relevance of intent, the SCC declined to review the case without giving reasons.⁶²¹

- Breach of the directives' definitions of direct discrimination, which include hypothetical less favourable treatment and comparisons with hypothetical persons (hypothetical comparator)

The SAC has held that hypothetical unequal treatment was excluded from the concept of discrimination.⁶²² Additionally, in another case, the SAC has held that a specific person treated more favourably had to be established.⁶²³

- Breach of the directives' definitions of direct discrimination, which imply a comparison with a similarly situated person who differs in terms of protected ground

The SAC has long-standing problematic case law that, in cases of dismissals based on employees'/civil servants' having become entitled to an old age and seniority pension, dismissed persons should be compared with others in the same group, i.e. those with acquired pension rights (as opposed to those without such entitlements, i.e. different age/seniority groups).⁶²⁴

⁶¹⁵ SCAC, Decision No. 8325 of 20 December 2019 in Case No. 11063/2019, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019.

⁶¹⁶ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

⁶¹⁷ SAC, Decision No. 8758 of 11 June 2019 in Case No. 1014/2019.

⁶¹⁸ SAC, Decision No. 4815 of 24 April 2020 in Case No. 7948/2018.

⁶¹⁹ See, *inter alia*, SAC, Decision No. 1253 of 27 January 2020 in Case No. 10834/2019 (ethnicity grounds), Decision No. 370 of 17 January 2020 in Case No. 5586/2019 (multiple grounds, including disability); Supreme Court of Cassation, Ruling No. 571 of 24 June 2020 in Case No. 37/2020 (age and other grounds).

⁶²⁰ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016, Decision No. 6577 of 7 May 2019 in Case No. 10380/2017, Decision No. 6946 of 9 May 2019 in Case No. 8352/2017.

⁶²¹ SCC, Ruling No. 596 of 22 July 2019 in Case No. 680/2019.

⁶²² SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018 (a company employee had stated to the complainant that he would be unequally treated if he applied).

⁶²³ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

⁶²⁴ See, *inter alia*, SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020, 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, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017. For more detail, see Section 4.7.1 a) above.

- Breach of the directives' burden of proof rule

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

11.2 Other issues of concern

- Non-adherence to a standard of banning *all* discrimination (Article 2(1) of Directive 2000/43/EC and Article 2(1) of Directive 2000/78/EC), including discrimination by assumption

In respect of recognising discrimination by perception, more often than not, in 2020, as in 2017-2019, the courts have required *obiter* that a protected ground be actual (have 'an objective presence'), thereby excluding assumed ones.⁶²⁵ In 2018, the SAC held that discrimination was not proven unless, 'the objective fact of [a protected ground] was established'.⁶²⁶

See Section 2.1.3 a) for more detail.

- Institutionalised anti-minority ideology

The current Government rules in coalition with a party which the European Commission against Racism and Intolerance has termed 'ultranationalist/fascist': the VMRO-BND.^{627 628} The current Cabinet includes the leader of this party as a Deputy Prime Minister.

- Equality body practice

The PADC does not use its powers, including its competence to start *ex officio* proceedings, in any strategic way, except in relation to disability rights. It has no defined 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.⁶²⁹ 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.⁶³⁰

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

⁶²⁵ See, *inter alia*, SCC, Ruling No. 41 of 25 January 2019 in Case No. 4570/2018; SAC, Decision No. 896 of 21 January 2020 in Case No. 1934/2019, Decision No. 636 of 15 January 2019 in Case No. 7229/2018, Decision No. 14026 of 21 October 2019 in Case No. 12163/2018, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

⁶²⁶ SAC, Decision No. 6151 of 11 May 2018 in Case No. 7203/2016.

⁶²⁷ Internal Macedonian Revolutionary Organisation - Bulgarian National Movement (*Вътрешна Македонска Революционна Организация - Българско Национално Движение*).

⁶²⁸ ECRI, *Report on Bulgaria*, 16 September 2014.

⁶²⁹ See, *inter alia*, SAC, 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, Decision No. 3645 of 14 March 2014 in Case No. 12679/2013.

⁶³⁰ PADC, letter No. 44-00-1609 of 20 April 2015, addressed to an individual named Boyko Boev.

12 LATEST DEVELOPMENTS IN 2020

12.1 Legislative amendments

In 2020, there have been no significant developments in equality legislation.

12.2 Case law

Roma

Relevant discrimination ground(s): Ethnicity

Name of the court: Supreme Administrative Court

Date of decision: 13 January 2020

Name of the parties: *Protection Against Discrimination Commission and Centre for Educational Integration of Children and Students from Ethnic Minorities v. 'Azbukari' Association*

Reference number: Decision No. 458 in Case No. 5375/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/6cddcda4a76dce8fc22584e40036cb9d?OpenDocument> (in BG)

Brief summary: The Supreme Administrative Court (SAC) confirmed a 2018 decision by the Sofia City Administrative Court (SCAC) that had struck down positive measures for Roma school students (exclusive scholarships). The SCAC had repealed a decision by the Protection Against Discrimination Commission (PADC), which had upheld the measures in a case brought by a civil society organisation (CSO) against the Minister of Education. The CSO had alleged that non-Roma students were discriminated against, as the impugned scholarships were available only to Roma students. The grants were provided under a targeted project aimed at preventing Roma students from dropping out of school. The SCAC considered the measure to be directly discriminatory against non-Roma students. The Court compared the impugned scholarships with generally available scholarships for academic achievement and noted that the latter were awarded only to excellent or very good students, while Roma scholarships were not dependent on a high-achieving academic record, with 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 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 for 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. Ethnicity-based scholarships were not the only means by which to achieve the legitimate aim pursued, and they disproportionately disadvantaged non-Roma students. Lack of funds was not the only reason for Roma school drop-out rates (lack of motivation was another reason) 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.

On appeal by the Centre for Educational Integration of Ethnic Minority Children and Students within the Ministry of Education, and by the PADC, the SAC confirmed this judgment, explicitly endorsing all of the SCAC's reasons. The SAC referred to Directive 2000/43/EC (Article 1, Article 2 (1-2) and Article 3) and to the CJEU's decision of 16 July 2015 in Case C-83/14 to endorse the SCAC's findings of less-favourable treatment of non-Roma students. The Court concluded that (positive) measures should not help to foster a culture of certain students having more rights and being entitled to more favourable treatment, and therefore being able to work less hard in school. Importantly, the SAC recognised the CSO's standing to bring an appeal against the PADC's decision, reversing its own settled case law that CSOs filing *actio popularis* motions alleging discrimination did not have standing to appeal against the PADC's decisions as such CSOs did not have a

legal interest of their own. Showing clear anti-Roma bias by allowing the challenge in this case, the SAC reasoned, in conflict with its own case law under the PADA, that the CSO in question had a legal interest because of its statutory goals and activities (purportedly to affirm civil society values, including non-discrimination and inclusion).

The SAC's decision is not in line with the directive 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, incomparable to the economic and educational opportunities generally enjoyed by majority families and children. In particular, the SAC'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 SAC used the principle of equal treatment as a reason to invalidate positive action. The SAC did not, in its reasoning, refer to the limitations on positive action drawn up by the CJEU in its judgment in Case C-193/17 of 22 January 2019 (the *Cresco* judgment).

Multiple discrimination

Relevant discrimination ground(s): Ethnicity and sexual orientation

Name of the court: Sofia City Court

Date of decision: 30 January 2020

Name of the parties: *G. V. and Bulgarian Bobsleigh Federation v. Ch. A*

Reference number: Decision No. 828 in Case No. 751/2019

Address of the webpage:

<https://sgs.justice.bg/bg/12543?from=30.01.2020&to=30.01.2020&actkindcode=5001&casenumber=751&caseyear=2019&casetype=%D0%93%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D1%81%D0%BA%D0%BE> (in BG)

Brief summary: The Sofia City Court (SCtC) partially confirmed a decision by the Sofia District Court, whereby the appellant G. V. had been found liable for direct multiple discrimination in the form of harassment (*sic*) on grounds of Roma ethnicity and sexual orientation, and the claimant, Ch. A., a National Sports Academy student and an employee at the Bobsleigh Federation (BF) had been awarded damages. The harassment had been perpetrated by G.V., an official at the BF, through a series of homophobic and racist remarks targeting Ch. A. Some of the impugned remarks were made on television, and some in the proceedings before the PADC (in writing). The PADC had found discrimination, and based on its decision the complainant had subsequently brought a compensation claim against the BF and G. V. The trial court had upheld his claims, awarding him non-pecuniary damages. It had held that the impugned conduct was such – inherently deleterious – that proving the non-pecuniary damages sustained was unnecessary; those were instead to be presumed. The SCtC confirmed this decision and the reasons for it. However, it reduced the compensation amount in respect of the racist statements to BGN 3 000 (EUR 1 500) from BGN 4 500 (EUR 2 250); for the homophobic statements, the Court awarded BGN 2 500 (EUR 1 250). The SCtC held that solely G. V., and not the BF, was liable for those amounts. The BF was not liable regardless of the fact that it had been G. V.'s employer at the time, as G. V. had not made the impugned remarks in his capacity as BF employee; on TV, he had not identified as a BF employee. The fact that the BF had not distanced itself from his comments did not render the entity liable for the latter. As for G. V.'s discriminatory statement made before the PADC, he had been defending himself in his individual capacity in the proceedings, not representing the BF. This decision is potentially out of line with the CJEU's judgment in *Asociația Accept* (Case C-81/12).

Ethnicity (Roma)

Relevant discrimination ground(s): Ethnicity

Name of the court: Supreme Court of Cassation

Date of decision: 14 February 2020

Name of the parties: *BHC and ERRC v. MBAL-Pazardzhik*

Reference number: Ruling No. 80 in Case No. 3932/2019

Address of the webpage: [https://ex-](https://ex-lege.info/%D0%92%D0%9A%D0%A1/%D0%BE%D0%BF%D1%80%D0%B5%D0%B4%D0%B5%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5/475991/)

[lege.info/%D0%92%D0%9A%D0%A1/%D0%BE%D0%BF%D1%80%D0%B5%D0%B4%D0%B5%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5/475991/](https://ex-lege.info/%D0%92%D0%9A%D0%A1/%D0%BE%D0%BF%D1%80%D0%B5%D0%B4%D0%B5%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5/475991/) (in BG)

Brief summary: The SCC refused to review a decision by the Pazardzhik Regional Court, which had confirmed the first-instance court's decision to dismiss claims by the Bulgarian Helsinki Committee (BHC) and the European Roma Rights Centre (ERRC) involving racial segregation of Roma women. The case (lodged by the author of this report in 2017) was an *actio popularis* against the Pazardzhik hospital, on the basis of evidence obtained by interviewing Roma women who had given birth in the hospital's maternity ward to the effect that there was a racial segregation practice in place there, which kept Roma women separate from majority women, in designated rooms. This evidence was confirmed by situational testing, in which undercover testers (BHC staff) had elicited statements from hospital staff directly confirming the said practice. The lower-instance courts had found that the allegations were not proven, as the hospital staff questioned in the proceedings had denied the existence of such a practice. The courts found that the hospital had adduced sufficient proof to rebut the inference of discrimination raised by the claimants' evidence. The SCC held that the lower court's decision had applied the principle of the shifting burden of proof in a manner compatible with the SCC's case law on this subject.

Relevant discrimination ground(s): Ethnicity

Name of the court: Supreme Administrative Court

Date of decision: 15 May 2020

Name of the parties: *CHEZ v. PADC and A. Todorov*

Reference number: Decision No. 5647 in admin. Case No. 4334/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/b7068007e9961957c225856800266ef9?OpenDocument> (in BG)

Brief summary: In similar follow-up proceedings after the 2015 CJEU judgment in the *CHEZ* case (Case C-83/14), albeit regarding a different Roma individual affected by the impugned practice, the SAC confirmed the SCAC's decision, which in turn had confirmed the PADC's decision in favour of the individual. The PADC had found discrimination based on ethnicity and had ordered the company, CHEZ, to abort the practice. On appeal, the SAC confirmed the SCAC's reasoning that the impugned practice was not the only possible means by which to prevent any alleged tampering with the electricity network, and therefore went beyond what was necessary for that purpose. The company had failed to prove that placing electric meters out of reach of consumers was the only way in which it could protect the facilities.

Relevant discrimination ground(s): Ethnicity

Name of the court: Supreme Administrative Court

Date of decision: 21 October 2020

Name of the parties: *PADC v. A. Nikolova*

Reference number: Decision No. 13045 in admin. Case No. 4671/2020

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/d04a10c08896ec6ec22586070045c849?OpenDocument> (in BG)

Brief summary: In follow-up proceedings after the 2015 CJEU judgment in the *CHEZ* case (Case C-83/14), the SAC confirmed the SCAC's decision whereby the case had been remanded to the PADC for a rehearing. Following the CJEU's ruling, the PADC had rendered a new decision. In 2017, this decision was quashed by the SCAC, which had found that the PADC had failed to implement the CJEU's guidance. The SCAC remanded the case with instructions for the PADC. In 2019, the PADC ruled again, finding no discrimination on the grounds of ethnicity as concerned Ms. Nikolova. On 30 January 2020, the SCAC had again remanded the case for a rehearing, repeating its unheeded instructions to the PADC. The

SCAC directed the PADC regarding the manner in which it was to implement the CJEU ruling in Case C-83/ 2014. In particular, the SCAC had instructed the PADC to: specify the action that had constituted the alleged discrimination; analyse the protected ground on which it was based, in view of the fact that the complainant was a non-Roma individual; study the possible availability of alternative means to curb the alleged tampering with the electricity supply network; consider the fact that the proof of such tampering adduced by the respondent company concerned the period 2010-2017, whereas the original complaint was filed in 2008; gather evidence of the company's practices in other residential areas where the electricity network was being tampered with, and of such areas' ethnic composition; and find whether the tampering had decreased as a result. The SCAC had found that the PADC had failed to implement the SCAC's previous instructions delivered by the latter's decision of 10 August 2017, and the CJEU's ruling. The PADC appealed against this SCAC decision, which led to the SAC's decision of 21 October 2020. The SAC confirmed the SCAC's decision.

Ms. Nikolova introduced her initial complaint in 2008, and she has since been unable to obtain an outcome from the proceedings in the course of 13 years, arguably in breach of her right under Article 6 ECHR (civil limb) to a hearing within a reasonable timeframe. In particular, the PADC has stalled since the CJEU's decision for no apparent legitimate reason, causing the SCAC to remand the case twice due to the PADC's failure to comply with repeated judicial instructions. Additionally, in its latest decision of 2019, the PADC has ruled in apparently unreasonable contrast to its own decisions of 2010 and 2012, whereby it had found discrimination (in the first instance, on the grounds of ethnicity, and in the second, on grounds of personal status) to now find no discrimination, a precarious conclusion especially in light of the strong-worded CJEU judgment providing clear guidance for the legal interpretation of the manifest offensive stigmatisation and interference in the case. This follow-up to the CJEU's ruling exemplifies the well-documented issue of the often problematic implementation of supranational judicial decisions at the domestic level, resulting in the delay, i.e. the denial, of justice.

Disability

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 27 January 2020

Name of the parties: *NAP v. K. St.*

Reference number: Decision No. 1204 in admin. Case No. 5536/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/d3f0c5f0170cf044c22584f900360135?OpenDocument> (in BG)

Brief summary: In a decision implementing the CJEU's judgment in *Milkova* (Case C-406/2015), the SAC confirmed a decision by the lower court, which had repealed an order by the tax authority director terminating a civil servant's service relationship without regard to his disability (in a case of redundancy), i.e. without prior permission from the labour inspectorate as would have been required under the Labour Code had the individual been an employee with the same disability (one among those listed under the relevant secondary legislation) as opposed to a civil servant, no such safeguard being provided for under the Civil Servant Act. The lower court had found this to be in breach of the directive and the PADA, referring to the CJEU's *Milkova* judgment. The SAC agreed.

The SAC ruled in a similar fashion in five more similar cases in 2020. They are identified below in chronological order.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 31 January 2020

Name of the parties: *S. Ts. v. P. P.*

Reference number: Decision No. 1644 in admin. Case No. 6992/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/9d4307121e8efe7bc22584fe004861eb?OpenDocument> (in BG)

Brief summary: The SAC repealed a decision by the lower court, which had upheld a PADC decision. The PADC had found that the appellant, a manager representing the employer, had discriminated against P. P., a library employee with disabilities whose employment had been terminated based on medical counter-indications by the relevant medical authorities. Other employees with disabilities had kept their jobs. The PADC had found this treatment to constitute harassment. P. P.'s disability had worsened, with a rise in her working inability percentage from 50 % to 89 %. Her manager had then requested two expert opinions (an official one, from the Territorial Expert Doctors' Commission (TEDC), and one from a consultant firm) as to her ability to perform her job as a librarian. Both opinions had indicated that P. P. was unable to work as a librarian; reasonable accommodation depended on the employer, according to the private consultant opinion. The relevant trade union entity had also given an opinion that terminating P. P.'s employment was in the interests of her health. The General Labour Inspectorate had then given the employer permission to terminate the employment; the latter was terminated. Meanwhile, P. P. appealed against the TEDC medical opinion before the National Expert Doctors' Commission (NEDC). The latter repealed this opinion, concluding that P. P. was in fact able to work as a librarian. The SAC held that these facts did not reveal a biased disability-based 'attitude' against P. P.; therefore, no harassment was at hand. P. P. had not notified her employer that she was appealing against the TEDC opinion. The latter had not indicated that it was subject to appeal. The other employees with disabilities who had kept their employment were not established to have received an official medical opinion to the effect that they were incapable of doing their jobs. It could not be concluded that the employer was aware of the NEDC appeal proceedings and had intentionally dismissed P. P. before the final outcome in order to humiliate or harm her.

This case demonstrates the tenacity of the medical approach to employment. Neither the PADC, nor any of the courts, questioned the employer's conduct in terms of their automatic following of medical indications regarding the employee's ability to hold her job. The issue of potential reasonable accommodation was not discussed either. The PADC and the lower court had found the employer at fault solely for failing to wait for the final outcome of the proceedings before making a decision whether to terminate the employment. They had not taken into account the employee's self-determination in terms of her own ability to do her job.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 5 February 2020

Name of the parties: *NAP v. I. V.*

Reference number: Decision No. 1825 in admin. Case No. 7044/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/21ed0fdad3b43073c22585030049d1b9?OpenDocument> (in BG)

Brief summary: In a case factually similar to the one above, the SAC repealed the lower court's decision, which had not taken into account the *Milkova* implications of the facts (instead, the lower court had repealed the termination order on other grounds not related to disability). The SAC remanded the case, indicating to the lower court the applicable principles under *Milkova*.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 19 February 2020

Name of the parties: *A. K. v. NAP*

Reference number: Decision No. 2691 in admin. Case No. 8622/2019

Address of the webpage:

Brief summary: In a case factually similar to the cases above but with a notable difference, the SAC confirmed the lower court's decision to the detriment of the complaint. The lower court had dismissed a civil servant's complaint against the termination of her service relationship without applying *Milkova*, as the disability in question was not one listed under the relevant secondary legislation, and therefore the civil servant would not have had the special protection of the Labour Code had she been an employee instead of a civil servant. Therefore, *Milkova* did not apply. The SAC agreed.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 28 April 2020

Name of the parties: *Bulgarian Food Safety Agency v. M. D.*

Reference number: Decision No. 5031 in admin. Case No. 14469/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/c9609c223556bde0c225853b00261e09?OpenDocument> (in BG)

Brief summary: In a case factually similar to the cases above, to which *Milkova* applied, the SAC confirmed the lower court's ruling applying *Milkova*.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 11 June 2020

Name of the parties: *Metropolitan Regional Health Inspectorate v. A. P.*

Reference number: Decision No. 7237 in admin. Case No. 2895/2019

Address of the webpage:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/acc8e8ed2fb46976c225857c00356a47?OpenDocument> (in BG)

Brief summary: In a case factually similar to the cases above, to which *Milkova* applied, the SAC confirmed the lower court's ruling applying *Milkova*.

Religion

Relevant discrimination ground(s): Religion

Name of the court: Supreme Court of Cassation

Date of decision: 25 March 2020

Name of the parties: *'Shri Chinmoy' Association and Others v. D. Panayotova-Pulieva*

Reference number: Ruling No. 221 in Case No. 2958/2019

Address of the webpage: <http://www.vks.bg/pregled-akt?type=ot-spisak&id=92A568B1FF053D16C2258536004456A7> (in BG)

Brief summary: The Supreme Court of Cassation (SCC) refused to admit to cassation review a decision by the Sofia City Court, which had dismissed a civil claim by minority believers against a traditional religious activist and an employee of a Bulgarian Orthodox Church entity.⁶³¹ The non-traditional faith group 'Shri Chinmoy' had filed a claim against a pro-Orthodox, anti-minority advocate who had successfully instructed various service providers to deny the minority group access to renting premises for faith-related concerts and other indoor gatherings. The advocate had done so by publishing and propagating an article against the minority group and by directly engaging with premises providers, seeking to influence their decisions with regard to renting their venues to the group. The first-instance civil court had ruled in favour of the minority claimants, finding incitement to discrimination on grounds of belief, ordering the respondent to terminate, and abstain from, the impugned conduct, and awarding damages (the equivalent of EUR 175 to each of the two minority believers). The appeals court found that the same facts, as established by the trial court, did not amount to incitement to discrimination as the respondent had been entitled to publish and propagate her article against the minority group as part of her

⁶³¹ Sofia City Court, Decision No. 553 of 24 January 2019 in Case No. 16814/ 2017 (The author of the report brought and represented this case until 2018).

right to free expression. Her article had not contained hate speech; therefore, it had not contained incitement (implicitly including instruction) to discriminate. Her article had not specifically mentioned the group's concerts; it had discussed the minority group's activities in general. In addition, the claimants had not proven that the respondent had treated them less favourably as compared with others.

The claimants' representatives applied for cassation review, formulating a number of questions to do with the appraisal of evidence by the appeals court; its manner of applying the shifting burden of proof rule to the facts; and the interpretation of the concept of incitement to discrimination under domestic law, in particular whether it required a comparison.

The SCC ruled that the questions filed on behalf of the minority group were inadmissible as they were poorly formulated or irrelevant from the standpoint of general procedural law as it pertains to the grounds for cassation review and/or were inadequately substantiated. The Court did not engage with any issues of discrimination law, but refused to hear the case on general procedural grounds (incompetently formulated cassation review grounds). This failure means that the appeals court decision is final. The latter amounts to a declaration that, in order for incitement to discrimination to be at hand (including instruction to discriminate), intent must be established, as well as less favourable treatment in comparison with third parties, and, in terms of content of the impugned expression, hate speech. This decision contradicts the directives.

Relevant discrimination ground(s): Religion

Name of the court: Sofia City Court

Date of decision: 9 November 2020

Name of the parties: *'Execution of Punishments' General Directorate v. Kh. Kh.*

Reference number: Decision No. 261079 in Case No. 15323/2019

Address of the webpage:

<https://sgs.justice.bg/bg/12543?from=09.11.2020&to=09.11.2020&actkindcode=5001&casenumber=15323&caseyear=2019&casetype=%D0%93%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D1%81%D0%BA%D0%BE> (in BG)

Brief summary: The Sofia City Court (SCtC) confirmed a decision by the first-instance court, which had upheld a claim by a prisoner against the prison administration authority concerning a refusal by the prison administration to grant him the opportunity to work in prison, which had been based on his religion (Islam). The trial court had established that other prisoners, non-Muslims, who had applied at the same time as the claimant were given such an opportunity, in contrast to him. The relevant prison employee has stated that it was 'their own decision whom to give work to'. This less-favourable treatment of the claimant amounted to harassment. The court had made a declaration of discrimination, which the SCtC upheld. The courts did not discuss why they found harassment rather than direct discrimination on the ground of religion.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Bulgaria
Date: 31 December 2020

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 *actio popularis* claims; NGO interveners; exemption from costs

Title of the law: People with Disabilities Act

Abbreviation: PDA

Date of adoption: 18 December 2018

Latest relevant amendments: 9 December 2020 (in force as of 1 January 2021)

Entry into force: 1 January 2019.

Web link: <https://www.lex.bg/bg/laws/ldoc/2137189213>

Grounds covered: disability

Civil/administrative/criminal law: Civil/administrative

Material scope: Universal

Principal content: Equal treatment, equal rights and non-discrimination as its aims and fundamental principles; reasonable accommodation duties employment, education, cars and traffic rules; accessibility workplaces, architecture, infrastructure, public transportation, public information, communications & technologies services, sports, services, universal design; positive measures

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: Equal access to education, equality and non-discrimination as its aims and fundamental principles; inclusion and accommodation requirements

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 (repealed after the cut-off date of this report)

Entry into force: 14 July 2009

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: INTERNATIONAL INSTRUMENTS

Country: Bulgaria

Date: 31 December 2020

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 Sept 1992	N/A	Yes	Yes
Protocol 12, ECHR	No	No	N/A	No	N/A
Revised European Social Charter	Yes 21 Sept 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 Sept 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 Sept 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
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	Yes 27 Sept 2007	Yes 26 Jan 2012	N/A	No	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?
Persons with Disabilities					

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