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Non-discrimination

Bulgaria

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including summary

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Country report

Non-discrimination

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

Bulgaria

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EXECUTIVE SUMMARY

1. Introduction

During the first half of 2022, Bulgaria was ruled by a broad four-party coalition Government comprised of left-wing, centrist and right-wing parties. Between 22 June 2022 (when it lost a vote of no confidence in the Parliament) and 2 August 2022, it acted as a Government in resignation. From 2 August 2022 until the end of the year, a caretaker Government appointed by the President governed the country. Bulgaria is a multi-ethnic and religiously diverse society. According to the 2021 census (the most recent one), the Turkish community amounts to 8.4 % of the population and the Roma community 4.4 %. Muslims represent 10.8 % of the population; Protestants 1.7 % and Catholics 0.9 %. The majority self-define as Eastern Orthodox.¹ Vulnerable groups include the Roma; refugees/migrants; persons 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.

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.² 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.³ 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.⁴ The legal system persists in failing to protect Roma from political hate speech, as the ECtHR held in 2021.⁵ 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, violent demonstrations and pejorative and hostile language. The ECtHR found Bulgaria liable in such a case.⁶

Persons 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.⁷ LGBT people suffer from hate speech and hate crime, as well as discrimination.⁸

¹ National Statistical Institute, Етнокултурни характеристики на населението към 7 септември 2021 година (Ethnocultural characteristics of the population as of 7 September 2021), 24 November 2022.

² *Yordanova and Others v. Bulgaria*, No. 25446/06, 24 April 2012.

³ *Paraskeva Todorova v. Bulgaria*, No. 37193/07, 25 March 2010.

⁴ See, among other authorities: *Nachova and Others v. Bulgaria*, Nos. 43577/98 and [43579/98](#), 6 July 2005; *Angelova and Iliev v. Bulgaria*, No. 55523/00, 26 July 2007.

⁵ *Budinova and Chaprazov v. Bulgaria*, No. 12567/13, judgment of 16 February 2021. The Court found violations of the right to non-discrimination and the right to private life.

⁶ *Tonchev and Others v. Bulgaria*, No. 56862/15, judgment of 13 December 2022. The case concerns information circulated to schools by the municipal authority containing pejorative and hostile remarks about the Evangelical denomination to which the applicant associations and pastors belonged. In view of the language used by the public authorities to describe the religious movement, and the fact that the domestic proceedings brought by the applicants had not afforded appropriate redress for their complaints, Bulgarian authorities had interfered disproportionately with the applicants' right to freedom of religion, overstepping their margin of appreciation under Article 9 of the ECHR.

⁷ See, *inter alia*, Supreme Administrative Court (SAC), Decision No. 10427 of 16 November 2022 in Case No. 4459/2022.

⁸ More information is available in the ILGA-Europe [Annual Review 2022](#).

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, in particular concerning Roma and lesbian and gay rights. However, Roma and LGBT rights protection in other types of cases is virtually non-existent in practice.

2. Main legislation

The Protection Against Discrimination Act (PADA) 2004 is the main anti-discrimination law, enacted to transpose the directives.⁹ It is a single equality law universally banning discrimination on a range of grounds, including race/ethnicity, sex, religion/belief, sexual orientation, disability and age, and providing uniform standards of protection and remedies. The PADA as a whole complies with the directives, going beyond them in significant aspects: universal material scope, an extended, open-ended list of grounds, additional forms of discrimination, extended equality body powers and special judicial redress. The PADA is actively invoked by individuals before the equality body and the courts and the case law is extensive and growing.

Another equality law is the ground-specific People with Disabilities Act (PDA),¹⁰ 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 Rights¹¹ (ECHR) (but not Protocol 12), the European Social Charter (Revised),¹² the International Covenant on Civil and Political Rights,¹³ the International Covenant on Economic, Social and Cultural Rights,¹⁴ the Convention on the Elimination of All Forms of Discrimination Against Women,¹⁵ the Convention on the Elimination of All Forms of Race Discrimination,¹⁶ the Convention on the Rights of Persons with Disabilities,¹⁷ and the Convention on the Rights of the Child.¹⁸ The Constitution and binding international law are directly applicable by domestic courts and supersede conflicting legislation. They are enforceable against private parties, as well as public bodies.

3. Main principles and definitions

The PADA prohibits and defines direct and indirect discrimination, including discrimination by association and by presumption. The PADA defines direct discrimination as treating a person on protected grounds less favourably than another person is treated, has been treated, or would be treated in comparable circumstances. The PADA defines 'on grounds of' as the actual, present or past, or assumed possession of one or more protected characteristics by the person who has been discriminated against, or by another person

⁹ Protection Against Discrimination Act (PADA) (*Закон за защита от дискриминация*), adopted September 2003, entered into force January 2004, last amended January 2018.

¹⁰ People with Disabilities Act (PDA) (*Закон за хората с увреждания*), adopted 18 December 2018, entered into force 1 January 2019, last amended March 2022 (as well as after the cut-off date for this report).

¹¹ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force 1953.

¹² Council of Europe European Social Charter (Revised), adopted 1996, entered into force 1999.

¹³ UN, adopted 1966, entered into force 1976.

¹⁴ UN, adopted 1966, entered into force 1976.

¹⁵ UN, adopted 1979, entered into force 1981.

¹⁶ UN, adopted 1965, entered into force 1969.

¹⁷ UN, adopted 2006, entered into force 2008.

¹⁸ UN, adopted 1989, entered into force 1990.

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 examples of bans on specific discriminatory conduct in employment, education and service provision. It provides 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 permits different treatment of non-nationals, where such treatment is provided for in law (Article 7(1), point 1) and allows for the setting of a maximum age for employment in view of the need for training for the post concerned or of the need for a reasonable period to fill the post before retirement (Article 7(1), point 6). 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 persons 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 PDA, 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 2022 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'.¹⁹

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.

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 Protection Against Discrimination Commission (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.

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

¹⁹ See, *inter alia*, SAC, Decision No. 1429 of 16 February 2022 in Case No. 6858/2021 (out-of-scope grounds), Decision No. 2866 of 25 March 2022 in Case No. 5304/2021 (out-of-scope ground); conversely Supreme Court of Cassation, Ruling No. 10 of 10 January 2022 in Case No. 2557/2021.

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.

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). The duty to remove the inaccessibility is declared and a court order to comply is implied.

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

6. Equality bodies

The 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 can be challenged before 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'.²⁰ The European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.²¹
- 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.

²⁰ PADA, Additional Provision, paragraph 1(6).

²¹ 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.

- A disproportionately small number of cases based on ‘sensitive’ grounds such as ethnic or racial origin and sexual orientation are being referred to and reviewed by the PADC and the courts, and there is a lack of focused effort on the part of the PADC to address discrimination issues on grounds that may be perceived as controversial in the society, despite the fact that the PADC is competent to initiate *ex officio* proceedings.
- There is no reliable measurement of the implementation rate of PADC decisions. In cases of non-compliance, the PADC has no formal powers other than to impose further fines.
- SAC case law, while evolving, has featured a number of interpretations which are arguably not compliant with the directives, curtailing access to justice in various ways (requiring intent, limiting *actio popularis* standing and providing erroneous legal qualifications).

INTRODUCTION

The national legal system

Bulgaria is a unitary state where the Constitution²² 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) 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.²³

The law on (equal) disability rights, the new People with Disabilities Act (PDA), 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

Official title of the law: Protection against Discrimination Act

Abbreviation: PADA

Date of adoption: 16 September 2003

Entry into force: 1 January 2004

Latest relevant amendment: 19 January 2018

Web link: <https://lex.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: administrative law

Material scope: universal

Principal content: prohibition of direct and indirect discrimination; harassment; instruction to discriminate; creation of a specialised body

²² Constitution (Конституция), adopted July 1991, last amended December 2015.

²³ 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).

Official title of the law: People with Disabilities Act

Abbreviation: PDA

Date of adoption: 18 December 2018

Entry into force: 1 January 2019

Latest relevant amendment: 4 March 2022

Web link: <https://lex.bg/bg/laws/ldoc/2137189213>

Grounds covered: disability

Civil/administrative/criminal law: administrative law

Material scope: universal

Principal content: protection of the rights of the persons with disabilities

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 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 an attempt to clarify 'ethnic origin'. The Supreme Administrative Court (SAC) has 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.²⁴ It 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, there was a case in which 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.²⁵ Therefore, no protected ground was established.

In more recent years, 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.²⁶

There is no 2022 case law dealing in substance with the ground 'ethnic origin'.

b) Religion or 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'.²⁷ A 'religious community' is defined as a 'voluntary union of natural persons for purposes of manifestation of a certain religion and performance of worship, religious rituals and ceremonies'.²⁸ 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'.²⁹ There is no defined relationship, in legislation or case law, between these definitions and religion as a protected ground in the PADA. There is no legal definition of the term 'belief' in either the Constitution or in Bulgarian primary or secondary legislation. The author found no case law defining this concept.

²⁴ SAC, Decision No. 12620 of 18 October 2018 in Case No. 115/2018.

²⁵ SAC, Decision No. 14026 of 21 October 2018 in Case No. 12163/2018.

²⁶ 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.

²⁷ Religious Denominations Act (RDA) (*Закон за вероизповеданията*), adopted December 2002, last amended March 2022, Additional Provisions, paragraph 1(1).

²⁸ RDA, Additional Provisions, paragraph 1(2).

²⁹ RDA, Additional Provisions, paragraph 1(3).

c) Disability

The PADA does not define disability. The PADA 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 PADA, Additional Provisions, paragraph 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 PADA, Additional Provisions, paragraph 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. 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).³⁰

In 2022, in at least three cases, the SAC and the SCC relied on the claimants' medical certification as having a particular percentage of reduced working ability as a matter of course, implying that the fact of their disability was established in this way, i.e. that proof of medical certification is implied for the establishment of the fact of disability.³¹

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.³² 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.³³ 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 in any sphere of public life, including professional life, 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. In 2022, the SAC established that the applicant was a person with disability because he had a permanent illness established under the relevant statutory procedure.³⁴

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 PADA. 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. In terms of societal impact, the court would hear (expert) witnesses and gather other evidence as it saw fit.

³⁰ See information at: <https://www.mh.government.bg/bg/informaciya-za-grazhdani/nelk-i-telk/> (in BG).

³¹ SAC, Decision No. 10238 of 14 November 2022 in Case No. 5081/2022, SCC, Ruling No 50935 of 12 December 2022 in Case No 2739/2022, Ruling 164 of 8 March 2022 in Case No 3109/2021.

³² SAC, Decision No. 9387 of 13 July 2020 in Case No. 14464/2020.

³³ SAC, Decision No. 896 of 21 January 2020 in Case No. 1934/2019.

³⁴ SAC, Decision No. 10238 of 14 November 2022 in Case No. 5081/2022; Decision No. 5760 of 14 June 2022 in Case No. 1959/2022.

The PDA definition of disability 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 persons with disabilities possess such certificates as a matter of course. In principle, people with any type or degree of disabilities would qualify for a corresponding certificate. 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,³⁵ Additional Provisions, paragraph 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,³⁶ Additional Provisions, paragraph 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'.³⁷ In the Ordinance on Inclusive Education issued under the PSEA, there is a definition of 'communication impairments'.³⁸

Furthermore, a piece of secondary legislation defines 'people of reduced mobility' as people who have permanent or temporary difficulties in moving, including, among others, people with various physical, sensory, mental and combined disabilities, people temporarily hindered in their movements (in plaster or using crutches), aged people, and people shorter than 150 cm, including children, people taller than 200 cm, and people who do not speak/understand Bulgarian.³⁹

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.⁴⁰ Another piece of secondary legislation defines 'persons of reduced mobility' as including persons with disabilities within the meaning of the PDA, among others.⁴¹ 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'.⁴²

³⁵ Automobile Transportation Act (*Закон за автомобилните превози*), adopted September 1999, last amended October 2021.

³⁶ Rail Transport Act (*Закон за железопътния транспорт*), adopted November 2000, last amended February 2021.

³⁷ Pre-School and School Education Act (*Закон за предучилищното и училищното образование*), entry into force 1 August 2016, last amended December 2022 (as well as after the cut-off date), Additional Provisions, paragraph 1(33) and paragraph 1(31).

³⁸ Ordinance on Integrative Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended November 2021, Additional Provisions, paragraph 1(2).

³⁹ Ordinance No. РД-02-20-2 of 26 January 2021 on Fixing the Requirements for Accessibility and Universal Design of the Elements of the Accessible Environment in the Urban Territory and of the Buildings and Infrastructure (*Наредба № РД-02-20-2 от 26.01.2021 г. за определяне на изискванията за достъпност и универсален дизайн на елементите на достъпната среда в урбанизираната територия и на сградите и съоръженията*), (last amended March 2022), Additional Provisions, paragraph 1(1).

⁴⁰ 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*), no amendments, Additional Provision, paragraph 1(1).

⁴¹ 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 August 2021, Additional Provision, paragraph 1.22.

⁴² 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, paragraph 1(3).

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

In 2021, the SAC held that 'disability' was a 'meaningful, objective, essential' characteristic and that being sick or healthy was an 'immanent' characteristic.⁴³ The Court equated any sickness to disability, reasoning: 'A sick condition is an impairment to the normal activity of the human body that temporarily hampers or renders impossible its normal everyday labour activity. [...] Each human body, to this or that extent, at one time or another, happens to have a sick condition, which means that in principle the sick condition is inherent to a human. Therefore, the protected ground of "disability" is at hand.' This implies that a short-term condition could equally qualify as a disability. Based on the above holding, which has not yet become settled case law, the conditions for a sickness to qualify as a disability would be: a) an impairment to the normal activity of the human body; b) resulting in work being temporarily hampered or impossible.

d) Age

National legislation does not define age. The Employment Promotion Act (EPA),⁴⁴ Additional Provisions, paragraph 1(4a) defines 'groups of unequal status on the labour market', using age as a component, along with other protected grounds.⁴⁵ 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.⁴⁶ The EPA, Additional Provisions, paragraph 1(18) also defines 'adult', which is applicable to positive measures in the EPA.⁴⁷

In 2019-2021, the SAC 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 the PADA.⁴⁸ 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.⁴⁹ Indirect age discrimination was not considered.

No relevant case law has been found for 2022.

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.

⁴³ SAC, Decision No. 7293 of 16 June 2021 in Case No. 2405/2021.

⁴⁴ Employment Promotion Act (*Закон за насърчване на заетостта*), adopted December 2001, entry into force January 2002, last amended June 2022.

⁴⁵ "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; [...].

⁴⁶ PADA, Article 7(1.9).

⁴⁷ "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'.

⁴⁸ SAC, Ruling No. 2711 of 25 February 2019 in Case No. 5704/2017.

⁴⁹ SAC, Decision No. 7272 of 11 June 2020 in Case No. 2647/2020.

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, paragraph 1(10), as 'heterosexual, homosexual or bisexual orientation'. This would potentially exclude other aspects of 'orientation', such as asexuality. As no case law dealing with such specifics exists yet, this would be subject to judicial interpretation.

2.2 Multiple and intersectional discrimination

In Bulgaria, multiple discrimination is prohibited by law. The PADA defines multiple discrimination as 'discrimination based on more than one [protected] ground'.⁵⁰ The PADA places a statutory duty on public authorities to give priority to positive measures for the benefit of multiple discrimination victims.⁵¹ The PADC hears multiple discrimination cases sitting with an extended panel of five members (rather than three).⁵² 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.

As of 2022, there is no case law effectively dealing with the concept of multiple discrimination. In several cases, the term was mentioned but was not decisive regarding the substance of the allegation.⁵³ In 2022, while cases in Bulgaria in which 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 plurality of grounds.

In 2022, the SAC, relying on the CJEU's judgment in *Milkova* – although multiple discrimination was not explicitly mentioned in the case – held that if the complainant had been working under an employment relationship and not under a civil service relationship, and in so far as he suffered from a disease included in the relevant statutory provisions, he would have enjoyed protection against dismissal under the Labour Code.⁵⁴

In Bulgaria, intersectional discrimination is not prohibited by law.

2.3 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 [...]'.⁵⁵ Therefore, discrimination on perceived or assumed grounds is explicitly prohibited. However, in 2022, as in previous years, in various unrelated factual contexts, the courts held that unequal treatment can be established only where there is an

⁵⁰ PADA, Additional Provisions, paragraph 1(11).

⁵¹ 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.

⁵² PADA, Article 48(3).

⁵³ SAC, Decision No. 2216 of 9 March 2022 in Case No. 11865/2021; Decision No. 10759 of 24 November 2022 in Case No. 3177/2022; Decision No. 9242 of 20 October 2022 in Case No. 4689/2022.

⁵⁴ SAC, Decision No. 5760 of 14 June 2022 in Case No. 1959/2022.

⁵⁵ PADA, Additional Provisions, paragraph 1(8).

objective presence of a protected ground, thereby ruling out discrimination by assumption.⁵⁶

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'.⁵⁷ Therefore, discrimination by association, including presumed association, is explicitly banned. There has been a case in which 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. 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. In addition, the SAC has 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 another case, 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. The case law is, overall, in line with the judgment in Case C-303/06.

2.4 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).⁵⁸ 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 2022, the approach, according to which 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, was reaffirmed by a decision of the SAC, which effectively denied the complainant the right to raise an issue of discrimination due to her dismissal. According to the Court in this case, the employer's *discretion* power was not subject to scrutiny from a discrimination standpoint, since Article 21 of the PADA contained an exhaustive list of grounds for termination of the employment agreement where the

⁵⁶ SAC, Decision No. 395 of 19 January 2022 in Case No. 8638/2021.

⁵⁷ PADA, Additional Provisions, paragraph 1(8).

⁵⁸ Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v. Komisija za zashtita ot diskriminatsia*, C-83/14, EU:C:2015:480.

employer is obliged to apply uniform criteria in respect of all employees.⁵⁹

The Supreme Court of Cassation held that a finding of discrimination did not require a finding of a breach of another piece of legislation, thus a respondent may have acted lawfully under other applicable rules and still be liable for discrimination.

In 2022, the SAC upheld a decision by the lower court quashing a PADC decision finding that there had been discrimination on the grounds of disability in a case in which an individual had been rejected in attempting to register a company with the commercial registry, as she had failed to provide sample signatures due to her disability (and had wanted to provide fingerprints instead). The SAC found that there had been no unequal treatment, as all other individuals in a comparable situation would have also been rejected. The Court did not consider reasonable accommodation, as the limitation (caused by the disability) was read in light of imperative norms provided for by law. On the other hand, the comparability test was carried out in the context of the exemption rules laid down in Article 7(1) of the PADA.⁶⁰

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.⁶¹ 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.⁶² Therefore, it was sufficient for a claimant to initially state facts indicating discrimination based on a protected ground.

Recognising the concept of a *hypothetical comparator*, the SAC held that a comparator was not required to be actual.⁶³ However, in 2022, the Court problematically held that it had to be established that a specific person has been treated more favourably and that direct discrimination was not proven as no such persons for comparison were established.⁶⁴

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 2022 (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'.⁶⁵ 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.

In some cases, the SAC has erroneously discussed less favourable (different) treatment as an instance of indirect, rather than direct, discrimination.⁶⁶

⁵⁹ SAC, Decision No. 9927 of 7 November 2022 in Case No. 1415/2022.

⁶⁰ SAC, Decision No. 11144 of 6 December 2022 in Case No. 4423/2022.

⁶¹ SAC, Decision No. 5023 of 26 August 2020 in Case No. 4599/2018.

⁶² SCC, Ruling No. 43 of 28 April 2020 in Case No. 13911/ 2019.

⁶³ SAC, Decision No. 164 of 7 January 2020 in Case No. 15327/2018.

⁶⁴ SAC, Decision No. 11651 of 15 December 2022 in Case No. 4543/2022.

⁶⁵ See, *inter alia*, SAC, Decision No. 1429 of 16 February 2022 in Case No. 6858/2021 (out-of-scope ground); Decision No. 2866 of 25 March 2022 in Case No. 5304/2021 (out-of-scope ground); Supreme Court of Cassation, Decision No. 262927 of 12 September 2022 in Case No. 13041/2020 (out-of-scope ground); SCAC, Decision No. 438 of 26 January 2022 in Case No. 6686/2021 (out-of-scope ground); Decision No. 2062 of 28 March 2022 in Case No. 4702/2021 (out-of-scope ground); Administrative Court Shumen, Decision No. 145 of 28 November 2022 in Case No. 293/2022 (disability and other (out-of-scope ground); Administrative Court Dobrich, Decision No. 346 of 27 October 2022 in Case No. 143/2022 (sexual orientation).

⁶⁶ 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.

c) Justification for direct discrimination

The PADA does not permit a general justification for direct discrimination with respect to any ground.⁶⁷ It only provides for an exhaustive list of specific exceptions for various protected grounds, including the six EU grounds.⁶⁸

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 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).⁶⁹

In 2022, the SAC correctly held that the ban on direct discrimination was absolute and there could be no general justification in such cases.⁷⁰ The Court reasoned that this feature distinguished direct from indirect discrimination. The former implied no examination of whether a legitimate aim or proportionality were at hand. The Court therefore held that the purported aims of the impugned difference of treatment (which was outside the scope of the directives) was immaterial. The Supreme Court of Cassation (SCC) reasoned in the same manner, adding that the exemptions were exhaustively listed under the law.⁷¹

2.5 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.

As discussed above in section 2.4, 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.⁷² The SAC erroneously discussed a situation of arguable indirect discrimination (food provided to all inmates in a prison that did not

⁶⁷ 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.

⁶⁸ PADA, Article 7.

⁶⁹ SCAC, Decision No. 370 of 17 January 2020 in Case No. 5586/2019.

⁷⁰ SAC, Decision No. 3849 of 20 April 2022 in Case No. 11488/2021. The case concerned local government regulations that made the receipt of lump-sum support in a case of birth conditional on the child being born in Bulgaria.

⁷¹ SCC, Ruling No. 60497 of 16 June 2021 in Case No. 1285/2021. The case was outside the scope of the directives, concerning prisoners' rights to correspondence and differing practices across penitentiary facilities.

⁷² SCC, Ruling No. 595 of 22 July 2019 in Case No. 109/2019.

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.⁷³ 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.⁷⁴ 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, 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.

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.⁷⁵ The SAC has construed indirect discrimination in line 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.'⁷⁶

The SCC has held 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 persons with disabilities at a particular disadvantage, amounted to indirect discrimination.⁷⁷ The SCC upheld the decision of the lower court, which had correctly reasoned as to the nature of indirect discrimination.

In contrast, in a comparable accessibility case, 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).⁷⁸

There was a case in which the SCC upheld an erroneous holding by the lower court that indirect discrimination was defined by a covert discriminatory aim, implying that this applied to cases of less favourable treatment.⁷⁹ Conversely, in another case, the SAC expressly held that indirect discrimination was not about 'treating differently persons in a similar situation', which the PADC had stated (concerning an age-based difference in the context of seniority for the purposes of old-age pensions) but instead was at hand 'when the application of one and the same rule results in different situations for its addressees'.⁸⁰ The SAC similarly upheld a lower court's ruling that placing persons at a particular disadvantage, as an element of indirect discrimination, was not a matter of unequal treatment but of the same treatment'.⁸¹ The case law is evolving, yet remains contradictory.

In 2022, the SAC decided at least one case in which the facts arguably revealed clear indirect discrimination against the Roma without even touching on this aspect. The case concerned local government regulations that limited financial assistance for a newborn or newly adopted child to mothers who: 1/ have at least secondary education; 2/ are 18-years-old or older; and 3/ the parents have not left a child in social institutions or for

⁷³ SAC, Decision No. 4983 of 28 April 2020 in Case No. 13721/2019.

⁷⁴ SAC, Decision No. 10495 of 30 July 2020 in Case No. 5792/2020.

⁷⁵ 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.

⁷⁶ SCAC, Decision No. 712 of 9 February 2022 in Case No. 9119/2020.

⁷⁷ SCC, Ruling No. 394 of 8 May 2020 in Case No. 1094/2020.

⁷⁸ SAC, Decision No. 8325 of 4 June 2019 in Case No. 45/2019.

⁷⁹ SCC, Ruling No. 60827 of 25 November 2021 in Case No. 2146/2021.

⁸⁰ SAC, Decision No. 12791 of 15 December 2021 in Case No. 5361/2021.

⁸¹ SAC, Decision No. 3929 of 29 March 2021 in Case No. 8113/2020.

adoption.⁸² The SAC discussed this case as direct discrimination based on education and age (protected grounds under the PADA). In an earlier case, the SAC discussed the disparate impact that the impugned provision would have on families in financial need who lack the education required.⁸³

To recapitulate, the case law still struggles with contradictions.

b) Justification test for indirect discrimination

Carrying out a justification test in proceedings regarding indirect discrimination is obligatory. 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 link 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.⁸⁴

2.5.1 Statistical evidence

Section 2.5.1 has not been updated for 2022. Regarding the legal framework and practice, see *Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Bulgaria*, reporting period 01.01.2021 – 01.01.2022.

2.6 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, paragraph 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).⁸⁵ This new interpretation is in stark contrast to extensive case law in previous years when, in

⁸² SAC, Decision No. 3849 of 20 April 2022 in Case No. 11488/2021.

⁸³ SAC, Decision No. 9058 of 5 August 2021 in Case No. 10865/2020.

⁸⁴ 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.

⁸⁵ SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020.

numerous cases of hate speech targeting communities, the PADC and the courts have found harassment to have occurred.⁸⁶

In 2022, the SAC and other courts have applied the concept of harassment to cases of discriminatory acts and comments addressed to/targeting particular individuals.⁸⁷ 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'.⁸⁸ 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. Conversely, in 2022, the SAC held that although damages may have occurred for the claimant, they might have not been a result of the harassment, the discriminatory treatment being only one of the factors causing the deterioration of the complainant's health and emotional status.⁸⁹

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 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 2022, the SCAC upheld a decision of the PADC finding discrimination in the form of harassment on the protected ground of sexual orientation resulting from a news media anti-gay publication. The SCAC ruled that the article in question instilled a general negative image towards all non-heterosexual persons, giving judgmental assessments of their orientation and containing epithets with negative meanings, which could undoubtedly damage the dignity of each of the representatives of this community and contribute to the

⁸⁶ 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.

⁸⁷ For instance, SAC, Decision No. 10759 of 24 November 2022 in Case No. 3177/2022; SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

⁸⁸ SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

⁸⁹ SAC, Decision No. 7150 of 14 July 2022 in Case No. 8559/2021.

creation of permanently negative and hostile attitudes towards each person with a different sexual orientation.⁹⁰

In 2022, the SAC ruled in a case of alleged racial harassment by means of hate speech,⁹¹ upholding the decision of Varna Administrative Court and referring to its merits in deciding that for harassment to be at hand against a particular claimant, that person needs to have been specifically targeted by the impugned statements. Furthermore, Varna Administrative Court held that the statement at issue did not contain verbal expressions aimed at a specific subject, and this was a mandatory condition for the act to be illegal, in the context of the term 'person' used by the legislator and that the 'interpretation of the [harassment] substantiates a definite conclusion that the will of the legislator does not aim at sanctioning consequences for behaviour [...], objectified in verbal or written statements, which are completely abstract in nature and at the same time are not directed either to a particular subject or even to a particular group of subjects.'⁹² 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 Bulgaria, harassment explicitly constitutes a form of discrimination: PADA, Article 5.

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.⁹³ 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.⁹⁴ 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.⁹⁵ If an employer fails to take such action, the affected employee could take legal action against them.

⁹⁰ SCAC, Decision No. 4631 of 6 July 2022 in Case No. 12615/2021.

⁹¹ SAC, Decision No. 4019 of 27 April 2022 in Case No. 12229/2021.

⁹² Varna Administrative Court, Decision No. 1230 of 6 October 2021 in Case No. 1274/2021.

⁹³ Obligations and Contracts Act (*Закон за задълженията и договорите*), Article 49.

⁹⁴ PADA, Article 8.

⁹⁵ PADA, Article 17.

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.⁹⁶

2.7 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 expressly includes instructions to discriminate in its definition.⁹⁷ 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.⁹⁸

In 2022, the SCAC wrongly held that discrimination in the form of incitement requires that the perpetrator of the incitement must be able to influence the addressee of the incitement. That last requirement has not been part of the legal definition of incitement⁹⁹ since 2012.¹⁰⁰

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.¹⁰¹ 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.

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

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

In Bulgaria, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law, but is not defined. The PADA, in Article 16, provides for accommodation for persons with disabilities in employment.¹⁰² This duty covers employees and successful job applicants (selected candidates entering employment) but, contrary to Directive 2000/78, 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.¹⁰³ 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' was intended by the legislator to be broadly interpreted: in national legal usage, this term may be synonymous with 'job'.

⁹⁶ PADA, Article 31.

⁹⁷ PADA, Article 5 in conjunction with Additional Provisions, paragraph 1.5.

⁹⁸ For instance, PADC, Decision No. 450 of 20 November 2018 in Case No. 180/2017.

⁹⁹ PADA, Additional Provisions, paragraph 1.5.

¹⁰⁰ SCAC, Decision No. 5768 of 12 October 2022 in Case No. 6188/2022.

¹⁰¹ PADA, Articles 71 and 78.

¹⁰² 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'.

¹⁰³ PADA, Article 16.

In proceedings under the PADA, the PDA could apply subsidiarity. The two acts have different subject matters and do not necessarily duplicate each other. A claim for discrimination is supposed to be based on the PADA. Under the PDA, 'reasonable facilitations' (*разумни улеснения*) are listed among the means to support persons with disabilities for purposes of their social inclusion.¹⁰⁴ Persons with disabilities are entitled to rehabilitation, which includes, *inter alia*, professional rehabilitation and labour rehabilitation.¹⁰⁵ 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'.¹⁰⁶ Labour rehabilitation includes 'adapting the labour environment to ensure employment for people with disabilities'.¹⁰⁷ Under the PDA, there is no 'reasonable' or 'disproportionate burden' limit to these entitlements.

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.¹⁰⁸ This provision 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 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.¹⁰⁹ This support is available only for people who are officially (medically) assessed as having a disability.

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 acquired a disability 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'.¹¹⁰ This duty pre-dates both the PADA and the IPDA,

¹⁰⁴ PDA, Article 5(2.4).

¹⁰⁵ PDA, Article 29(1).

¹⁰⁶ PDA, Article 29(6.5).

¹⁰⁷ PDA, Article 29(9.6).

¹⁰⁸ PDA, Article 40.

¹⁰⁹ PDA, Article 44(1.1-3).

¹¹⁰ Labour Code (*Кодекс на труда*), entered into force 1 January 1987, last amended 30 December 2022 (as well as after the cut-off date for this report), Article 314. Such accommodation can include both adjustments to working conditions for the same job or reassignment to another job.

as well as the directive.¹¹¹ 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.¹¹²

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'.¹¹³

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. persons with disabilities, in their workplaces.¹¹⁴ 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.¹¹⁵

The lack of definitions of the duties on employers to provide reasonable accommodation for persons 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.

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 2022, the SAC held, in a case concerning the non-admittance of a blind juror to court hearings, that reasonable accommodation may consist of material, personal or organisational assistance.¹¹⁶ The Court's decision was based on the reasoning put forward in a CJEU judgment.¹¹⁷ The SAC essentially referred the case back to the PADC. with injunctions to the latter to take into consideration the judgment in case C-824/19, i.e. to consider whether eyesight is essential for the carrying out of the activity at issue and whether a reasonable accommodation would have been applicable. It should be noted that the SAC could have decided the case on the substance. and there was no need to refer it back to the PADC. It should also be noted that in Bulgaria, jurors are officials who are appointed pursuant to the Law on the judiciary. According to a Supreme Judicial Council (SJC) ordinance,¹¹⁸ jurors shall be remunerated from the budget of the judiciary for the time during which they perform their functions and duties.

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.

¹¹¹ The Labour Code, including this particular provision, has been in force since 1987.

¹¹² Labour Code, Article 317(4).

¹¹³ Civil Servant Act (*Закон за държавния служител*), entered into force 28 August 1999, last amended 22 December 2020, Article 30.

¹¹⁴ Healthy and Safe Working Conditions Act (HSWCA) (*Закон за здравословните и безопасни условия на труд*), last amended 16 December 2022, Article 16(1.4).

¹¹⁵ 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)).

¹¹⁶ SAC, Decision No. 7115 of 14 July 2022 in Case No. 1084/2018.

¹¹⁷ Judgment of 21 October 2021, *TC and UB v. Komisija za zashtita ot diskriminatsia and VA*, Case C-824/19, ECLI:EU:C:2021:862.

¹¹⁸ SJC, Ordinance No. 7 on jurors, entered into force 10 October 2017, last amended 30 September 2022.

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 persons with disabilities not possessing such certificates, having been unable to obtain them for some reason.¹¹⁹ 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 persons with disabilities under the legislation, regardless of any anti-discrimination protection.

d) Failure to meet the duty of reasonable accommodation for persons 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, the Civil Servant Act and the Healthy and Safe Working Conditions Act.

In the 2022 case concerning the blind juror,¹²⁰ following the referral of the case by the SAC to the PADC and during the proceedings before the latter, the complainant passed away and their successors did not wish to continue the proceedings. The case was thus closed by the PADC (after the cut-off date for this report).¹²¹ It should be noted that, with the information and evidence that the SAC had at its disposal, the latter would have been able to decide the case on the merits rather than referring it back to the PADC. In a way, that could be viewed as amounting to a failure to meet the duty of reasonable accommodation for persons with disabilities.

Previously, the SAC has 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.¹²² 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.

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

¹¹⁹ The courts are not manifestly barred from establishing a disability without the certificates in question, but case law shows that the courts have relied exclusively on such certificates and that on at least one occasion they did not accept other documents such as discharge reports or ambulatory documents. See, for example, PADC, Decision No. 190 of 9 February 2021 in Case No. 888/2019.

¹²⁰ SAC, Decision No. 7115 of 14 July 2022 in Case No. 1084/2018.

¹²¹ PADC, Decision No. 164 of 25 April 2023 in Case No. 397/2015.

¹²² SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

organisation. Under the PADA, 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 persons with disabilities

In Bulgaria, there is a legal duty to provide reasonable accommodation for persons 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.¹²³ The PADA provides for a duty on universities to ensure a supportive environment and 'special accommodations'.¹²⁴ Children and school students are entitled to 'additional support' to facilitate their equal access to quality education and inclusion.¹²⁵ Regional inclusive education support centres have a duty to provide such additional support to children and students with disabilities, as well as 'resource support' to children and students with 'special educational needs'.¹²⁶ The PADA duties are absolute (there is no disproportionate burden defence).

In addition, under the PADA, people with long-term disabilities are entitled to financial aid for the accommodation of housing.¹²⁷ 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.¹²⁸

The Ordinance on Inclusive Education¹²⁹ (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'.¹³⁰

The Ordinance provides for equal access to education through reasonable facilitations and various forms of accessibility and other resources.¹³¹ It defines reasonable facilitations as a means to make textbooks and other learning materials accessible.¹³² It specifically provides for reasonable facilitations for taking school leaving exams.¹³³

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 persons with

¹²³ PADA, Article 32.

¹²⁴ PADA, Article 33.

¹²⁵ PADA, Article 31(2).

¹²⁶ PADA, Article 32(1).

¹²⁷ PADA, Article 24(2.2), Article 75(1).

¹²⁸ PADA, Articles 65 - 67. Article 65(1) was amended in the above sense in 2020, with the amendment entering into force as of 2021.

¹²⁹ Ordinance on Integrative Education (OIE) (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended November 2021, Additional Provisions, paragraph 1.8.

¹³⁰ OIE, Additional Provisions, paragraph 1.8.

¹³¹ OIE, Article 102.

¹³² OIE, Article 105.

¹³³ OIE, Article 107.

disabilities.¹³⁴ In schools and pre-school establishments, conditions for adapted physical exercise and sports shall be created.¹³⁵ Adapted physical activity is defined as physical activity by people of reduced capabilities or health issues that fosters their health.¹³⁶

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).¹³⁷ The court held that, for the purposes of establishing such a violation, no comparison was needed. The SAC invoked the CRPD definition of 'reasonable facilitations' (reasonable accommodation).

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

Section 2.8.f has not been updated for 2022. Please see Country report: Non-discrimination – Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Bulgaria, reporting period 01.01.2021 – 01.01.2022.

¹³⁴ Physical Education and Sports Act (*Закон за физическото възпитание и спорта*) (PESA), entry into force January 2019, last amended November 2020, in force as of January 2021, Article 47(2.3).

¹³⁵ PESA, Article 51(1).

¹³⁶ PESA, Additional Provisions, paragraph 1.1.

¹³⁷ SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

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.¹³⁸ 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.¹³⁹

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.¹⁴⁰ The courts and the PADC have generally recognised the standing of legal persons as victims. In 2022, the SAC, in a case brought by a non-profit organisation, expressly held, relying on the relevant PADA provision, that associations of individuals, as well as legal entities, enjoy the rights under the PADA when they are discriminated against on the grounds under Article 4(1) of the Law, in relation to their members or employees. Therefore, an association of natural persons may enjoy the rights under the PADA, when the association itself is discriminated against on a ground related to its members.¹⁴¹ 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.¹⁴² 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).¹⁴³ 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 directives in cases where magistrates engaged in harassment, for instance, or made case administration decisions based on protected grounds – for example, the case involving a blind juror discussed in section 4.1. The latter case led to a request for a preliminary ruling given that in 2021, the CJEU had held that Directive 2000/78, read in the light of the

¹³⁸ PADA, Article 3(1).

¹³⁹ PADA, Article 7(1.1).

¹⁴⁰ PADA, Article 3(2).

¹⁴¹ SAC, Decision No. 3834 of 20 April 2022 in Case No. 7058/2021.

¹⁴² PADA, Article 6(1).

¹⁴³ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

Charter of Fundamental Rights and the CRPD, precluded a blind person from being totally deprived of any possibility of serving as a juror in criminal proceedings.¹⁴⁴ Following the CJEU judgment, the SAC repealed the PADC's decision and referred the case back to the PADC for a fresh examination.¹⁴⁵ As opposed to the aforementioned decision regarding the Prosecutor General the possibility of the respondent magistrates (two judges) being held liable for discrimination was not called into question.

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.¹⁴⁶ 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.¹⁴⁷ 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).

In previous years, the SAC has held that the PADC may not establish a breach when it finds that a piece of legislation is discriminatory and may not issue injunctions to the relevant body (for example, the Government or a minister) to discontinue such a breach by doing the necessary to change the legislation.¹⁴⁸ Instead, it may merely make suggestions and recommendations in that regard, which would be non-binding.

However, in 2022, the SAC reached a different conclusion on the PADC's authority to issue injunctions to public bodies. It did so by upholding the SCAC's decision confirming the PADC's decision by which the latter, *inter alia*, issued an injunction to the Minister of Health to 'take all necessary measures to eliminate the de facto discrimination experienced by insured individuals with complete maxillary and/or mandibular dislocation outside the 65-69 age group. The outcome of these measures should be the establishment of criteria and guarantees for access to the relevant medical devices through full or partial payment by the state, irrespective of the age of the person.'¹⁴⁹ Furthermore, the first instance SCAC had clearly held that: 'PADC's decision in this part was adopted on the basis of Article 47 point 4 of the PADA and was addressed to the Minister of Health. It constituted an injunction which the PADC has the authority to issue in accordance with the abovementioned provision of the law. Pursuant to Article 47 point 4 of the PADA the PADC has the authority to issue injunction with a view to complying with this or other laws, governing equality of treatment.'¹⁵⁰ Regarding that case, as of now there is a new ordinance in place, the relevant annex of which does not contain the age limitations in question.¹⁵¹

¹⁴⁴ See Judgment of 21 October 2021, *TC and UB v. Komisia za zashtita ot diskriminatsia and VA*, Case C-824/19, ECLI:EU:C:2021:862.

¹⁴⁵ SAC, Decision No. 7115 of 14 July 2022 in Case No. 1084/2018.

¹⁴⁶ PADA, Article 3(1).

¹⁴⁷ PADA, Article 6(1).

¹⁴⁸ SAC, Decision No. 9126 of 10 August 2021 in Case No. 3218/2021.

¹⁴⁹ SAC, Decision No. 4036 of 27 April 2022 in Case No. 563/2022.

¹⁵⁰ SCAC, Decision No. 6671 of 12 November 2021 in Case No. 3539/2021.

¹⁵¹ Minister of Health, Ordinance No. 9 of 10 December 2019 on determining the package of health activities guaranteed by the budget of the national health insurance fund, entered into force 13 December 2019, last amended 23 August 2022.

Furthermore, the SAC has previously held that the commander of the military air force had unfettered discretion in the matter of whom to include as a pilot in the force.¹⁵² This discretion was not subject to judicial review, there being no legislative criteria for its exercise, including in terms of possible discrimination (the case concerned an age-based refusal). Nevertheless, the Court did not stop there but proceeded to justify the impugned exclusion as an exemption within the meaning of Directive 2000/78.

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.¹⁵³ The relevant provisions consist of the general ban on discrimination, which has universal scope,¹⁵⁴ and certain specific employment discrimination bans.¹⁵⁵ The latter provide examples of the conduct prohibited under the general discrimination ban (e.g. no discriminatory job requirements; no demands for information about protected grounds from job applicants; 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 2022, the courts decided a number of cases brought by (former) employees and civil servants.¹⁵⁶ For example, the SAC held that it was indisputable that if the claimant (a civil servant) had been working under an employment relationship and not under a civil service relationship, and in so far as he suffered from a disease included in the relevant provisions granting special protection to employees that had certain health conditions, he would have enjoyed the protection of dismissal under Article 333 paragraph 1(3) of the Labour Code. The SAC concluded that there was an impermissible differentiation between persons suffering from the same illnesses on the ground that they work under a different type of legal relationship, unjustified by an objective, legal purpose, in the presence of statutory protection in the event of dismissal of only the former.¹⁵⁷

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.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰ Additionally, conditions for access to

¹⁵² SAC, Decision No. 10131 of 6 October 2021 in Case No. 5640/2021.

¹⁵³ PADA, Article 6(1) and Articles 12-28.

¹⁵⁴ 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.

¹⁵⁵ PADA, Article 6(1), Articles 12-28 and Article 37(2).

¹⁵⁶ See, for instance, among many others, SAC, Decision No. 9927 of 7 November 2022 in Case No. 1415/2022, Decision No. 10821 of 28 November 2022 in Case No. 3554/2022, Decision No. 1309 of 11 February 2022 in Case No. 4761/2022; Decision No. 5263 of 1 June 2022 in Case No. 1529/2022.

¹⁵⁷ SAC, Decision No. 5760 of 14 June 2022 in Case No. 1959/2022.

¹⁵⁸ PADA, Article 36.

¹⁵⁹ PADA, Article 37(2).

¹⁶⁰ PADA, Article 26.

self-employment are covered by the general comprehensive provision on the universal material scope of the PADA.¹⁶¹

There is no relevant case law on record.

Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶² 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.¹⁶³

Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶⁴

Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶⁵

Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶⁶ All five grounds are covered.

¹⁶¹ PADA, Article 6(1).

¹⁶² 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.'

¹⁶³ PADA, Articles 12-14, and 26.

¹⁶⁴ 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.

¹⁶⁵ PADA, Article 6(1) and Article 36.

¹⁶⁶ PADA, Article 6(1).

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.

Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶⁷

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.¹⁶⁸ All five grounds are covered. Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁶⁹ All five grounds are covered. The scope of protection under the PADA is universal: discrimination is banned with regard to the exercise of all rights and freedoms (Article 6(1)). Therefore, any discriminatory treatment in school would be covered, including educational content. Gender identity/expression or sex characteristics are not covered in national legislation.

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.¹⁷⁰ 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.¹⁷¹ Compulsory pre-school and school education is free.¹⁷²

In 2022, as in previous years, there are still practices in relation to pupils with disabilities that give rise to problems. While under the legislation integrative (inclusive) education is the rule,¹⁷³ and declared an integral part of the right to education,¹⁷⁴ 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 UNICEF Bulgaria.¹⁷⁵ In 2022, 27 166 children with special

¹⁶⁷ PADA, Article 7(1.8).

¹⁶⁸ 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.

¹⁶⁹ 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.

¹⁷⁰ 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 December 2022, Article 7(1-2).

¹⁷¹ PSEA, Article 3(2.3-4).

¹⁷² PSEA, Article 9(1-3).

¹⁷³ PSEA, and secondary legislation – the Ordinance on Integrative Education (*Наредба за приобщаващото образование*), entry into force 27 October 2017, last amended November 2021.

¹⁷⁴ PSEA, Article 7(2).

¹⁷⁵ Information shared with media by Christina de Bruin, UNICEF representative for Bulgaria: https://bnr.bg/radiobulgaria/post/101738345/kristina-de-broin-unicef-mnogo-ot-decata-s-uvrejdania-v-bulgaria-namat-dostap-do-obrazovanie?fbclid=IwAR2ilavMmHvYoLbyxfcyBn-Lrj_IVF7wPuZ98RaP1rs9ZW20qEpmHXzBsL.

educational needs were enrolled in schools and kindergartens, including mainstream ones.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰

In 2022, UNICEF published a National Survey of attitudes and social norms towards children with disabilities and developmental difficulties in Bulgaria.¹⁸¹ The survey revealed deeply rooted attitudes of non-acceptance and isolation, even where children with disabilities are formally admitted in the mainstream schools. 45.3 % of parents of children without disabilities fully agreed and 36.6 % partially agreed (81.9 % of the total) that children with physical disabilities need special educational institutions (e.g. special schools or centres). 49.7 % fully agreed and 30.5 % partially agreed (80.2 % of total) with that statement as regards children with intellectual disabilities.

The prevailing opinion among parents of children without disabilities was that attitudes towards children with physical disabilities and intellectual difficulties aged three to six years are not the same as attitudes towards their peers. Respondents expressed a belief that at kindergarten, those children are often excluded or restricted in their overall development and inclusion due to their disability/difficulty.

The experts interviewed said that children with developmental difficulties, even when involved in studies and present in the classroom, are often denied successful inclusion in the group. Typically, they are placed at the back or in the corner of the room; they are accompanied by an adult, be it a parent or another person in the capacity of a personal assistant; and if they are calm and quiet, they remain almost unnoticed.

Under the legislation, children with sensory (hearing or sight) impairments are channelled into special schools for their category.¹⁸² Children with other disabilities are entitled to enrol in general kindergartens and schools,¹⁸³ and may not be segregated into separate classes or groups.¹⁸⁴ 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.¹⁸⁵ Under the law, this may be done 'as an exception, when educational objectives cannot be achieved through another form of support'.¹⁸⁶ 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.

¹⁷⁶ Decision No. 94-299/10.02.2023 of the Ministry of Education and Science for the granting of access to information upon request with ref. No. 94-299/23.01.2023 filed by the National Network for Children.

¹⁷⁷ See: [UNICEF thematic overview](#). See also: [expert opinion](#).

¹⁷⁸ See: [UNICEF thematic overview](#). See also: [expert opinion](#).

¹⁷⁹ Expert [opinion](#).

¹⁸⁰ Expert interview accessible at: <https://bnr.bg/post/101370469/vesela-banova>.

¹⁸¹ See: [UNICEF National Survey](#)

¹⁸² PSEA, Article 44(1.1).

¹⁸³ PSEA, Article 192(1).

¹⁸⁴ PSEA, Article 99(5).

¹⁸⁵ PSEA, Article 145(5) and Article 194(1).

¹⁸⁶ PSEA, Article 194(1).

In 2022, the SAC repealed a decision by the Sofia City Administrative Court and awarded non-pecuniary damages to a child with disabilities, incurred as a result of violations of Article 10, Article 11 and Article 4(3) of the PADA, namely discrimination on the grounds of disability in the context of a programme for free of charge use of a social service called 'Assistant for Independent Childhood'.¹⁸⁷ The child obtained a decision by the PADC finding indirect discrimination and brought court proceedings, being awarded non-pecuniary damages to the amount of BGN 4 000 (EUR 2 000).

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 mainly 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 the European Commission's Education and Training Monitor 2022,¹⁸⁸ in Bulgaria, segregation in education remains a challenge and a main obstacle to access to quality education. The share of Roma children aged from seven to 15 who attend formal education is 86.2 %, as against 94.6 % of the total population (Fundamental Rights Agency, 2022). Only 28 % of Roma students aged 20-24 complete upper secondary education, while for the Bulgarian population as a whole, this figure is 83.6 %. Almost two thirds of Roma children aged from six to 14 attend a school or kindergarten where all or most of their schoolmates are Roma. Three quarters of Roma children under 18 are at risk of poverty (Fundamental Rights Agency, 2022). The Organisation for Economic Co-operation and Development (OECD) Programme for International Student Assessment (PISA) shows that students with similar socio-economic status and performance levels tend to be concentrated in the same schools. A survey by the EU's Fundamental Rights Agency reports that educational segregation is getting worse in general schools in particular. Parents are withdrawing their children from schools where Roma children are concentrated, and desegregation programmes are limited in scope. Authorities do not collect information about the ethnic origin of students. However, schools do gather information about the parents' educational status; this information helps to identify vulnerable groups that are eligible for additional funding from the state.

According to a 2020 nationally representative sociological study of the education of Roma carried out by an NGO, Trust for Social Achievement,¹⁸⁹ the number of Roma children in segregated schooling is growing alarmingly: having stood at 31 % in 2011, the share of Roma children studying in exclusively Roma schools had reached 47 % in 2020.¹⁹⁰

According to the Ministry of Education and Science,¹⁹¹ the number of children returning to the educational system in 2022 was 11 544. The number of children of preschool and school age who dropped out of the school system was 362.

¹⁸⁷ SAC, Decision No. 5409 of 6 June 2022 in Case No. 10249/2021.

¹⁸⁸ See European Commission (2022), Education and training monitor 2022: Bulgaria, [available at: https://op.europa.eu/webpub/eac/education-and-training-monitor-2022/en/country-reports/bulgaria.html](https://op.europa.eu/webpub/eac/education-and-training-monitor-2022/en/country-reports/bulgaria.html).

¹⁸⁹ Details available at: <http://socialachievement.org/en/>.

¹⁹⁰ See media reports at: <https://bnr.bg/horizont/post/101406542>; <https://www.24chasa.bg/novini/article/9423115>.

¹⁹¹ Decision No. 94-299/10.02.2023 of the Ministry of Education and Science for the granting of access to information upon request with ref. No. 94-299/23.01.2023 filed by the National Network for Children.

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'.¹⁹² 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.¹⁹³
2. Children in special schools for students with 'special educational needs'¹⁹⁴ (under the law, 'centres for special educational support', or 'special groups', or 'field' (*изнесени*) classes/groups in social services in the community) (over-representation).¹⁹⁵
3. Children in schools for juvenile delinquents (disproportionate representation). One report noted in 2004 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'.¹⁹⁶

The PADA bans racial segregation as a form of discrimination¹⁹⁷. 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'.¹⁹⁸ 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.¹⁹⁹

In a landmark case, the SCC effectively confirmed (by not admitting to cassation review) a decision by the Pazardzhik Regional Court (PRC) in a Roma segregation case.²⁰⁰ 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'.²⁰¹ The PRC had, in turn, confirmed the first instance court's decision, which had contained the same interpretation of racial segregation.²⁰² The SCC agreed, reproducing the interpretation verbatim.

¹⁹² 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.

¹⁹³ 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.

¹⁹⁴ 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, paragraph 1(31)).

¹⁹⁵ 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.

¹⁹⁶ 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>.

¹⁹⁷ 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.

¹⁹⁸ PADA, Article 5.

¹⁹⁹ PADA, Additional Provision, paragraph 1(6).

²⁰⁰ 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.

²⁰¹ SCC, Ruling No. 80 of 14 February 2020 in Case No. 3932/2019.

²⁰² Pazardzhik Regional Court, Decision No. 233 of 25 June 2019 in Case No. 315/2019.

²⁰³ 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 concerning a practice of racial segregation in the hospital's maternity wards, consisting of separating Roma

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).²⁰³ 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,²⁰⁴ the notion of 'compelled' 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'.²⁰⁵ 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 interpretation of 'compelled' led to a barrier to the granting of any protection.²⁰⁶ In a case concerning the disproportionate representation of Roma children in special schools, the equality body instructed the Minister of Education to take measures to stop the admission of 'healthy' children to special schools.²⁰⁷ The aforementioned case law shows that the 'compelled' nature of racial segregation prevents the effective protection against that form of discrimination.

According to the authorities, the situation has improved. A strategic document, the Strategic Framework for the Development of Education, Training and Learning in the Republic of Bulgaria (2021-2030),²⁰⁸ adopted on 24 February 2021 by a decision of the Council of Ministers, sets out the following. Successes have been achieved in increasing the coverage of children and students from vulnerable groups, including Roma, in pre-school and school education, increasing their participation in secondary and higher education. Measures to promote and implement the process of educational desegregation have been implemented and, together with measures to build tolerance and intercultural dialogue skills, have had a positive impact on ensuring equal access to quality education for all children and pupils. No specific data and source are provided. The Strategic Framework envisages measures to be implemented to expand opportunities for the effective inclusion of children/students with special educational needs; vulnerable groups including Roma; those seeking or granted international protection; and migrants. Cooperation between pre-school and school education institutions with state and local authorities in the social and health spheres, with educational mediators and with parents and local communities will be strengthened. An inclusive, supportive, safe and secure educational environment will be provided for effective learning, for the protection and promotion of the health of children and pupils and for their full personal development.

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.

²⁰³ PSEA, Article 62(4) and Article 99(4) and (6).

²⁰⁴ 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).

²⁰⁵ 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.

²⁰⁶ 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.

²⁰⁷ PADC, Decision No. 80 of 16 October 2007.

²⁰⁸ Strategic Framework for the Development of Education, Training and Learning in the Republic of Bulgaria (2021-2030), available (in BG) at: <https://web.mon.bg/bg/143>.

Among the measures for the educational integration of children from vulnerable groups, including Roma, the following are mentioned: promotion of school desegregation and formation of a supportive community environment, inter-school activities, creation of partnerships with local communities and the civil sector, additional work with students and parents, promotion of parental involvement in the educational process in a multicultural environment; comprehensive support for access to education for children and students from small settlements (nutrition, transport, textbooks); implementation of policies for tolerance and respect for cultural differences and effective intercultural interaction to overcome negative societal attitudes based on ethnicity and cultural identity; Support to increase the enrolment in secondary and higher education of members of vulnerable groups, including Roma. Specific results and/or measure adopted in achieving the stated aims are yet to be shown. A number of statements by NGOs regarding this strategic document were submitted.²⁰⁹ They reflect a generally positive attitude towards the Strategic Framework, although one of the organisations stated that the document did not contain established terms such as 'educational integration of children and pupils from ethnic minorities', despite these concepts being introduced and used in various strategic documents, including policies of the state in the field of education.

In a landmark case, the SAC found racial segregation of Roma school students, upholding a PADC decision and the lower court's ruling to the same effect.²¹⁰ A school headmistress had posted on the school's Facebook page that Roma children would not be enrolled. She had attempted to justify this as prevention of 'secondary segregation' (white flight) as allegedly, parents had expressed a wish for their children not to study together with Roma children. The PADC had held that, while the headmistress, in practice, had not refused to enrol any Roma child, her public message on behalf of the school constituted a violation per se, indicating a discriminatory policy and discouraging Roma applicants. The lower court and the SAC agreed that the discriminatory statement was sufficient in itself and could not be justified by the purported aim, referring to *Firma Feryn*. Both harassment and segregation were established.

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.²¹¹ 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. Gender identity/expression or sex characteristics are not covered in national legislation.

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 2022, the SAC upheld a decision by the SCAC, confirming a decision by the PADC.²¹² The PADC had found that a 'quick loan' company had built and maintained an architectural environment that was inaccessible for people with disabilities, which amounted to direct discrimination on the ground of disability. The PADC issued an injunction to the company

²⁰⁹ See, *inter alia*, the statements of the Amalipe Foundation, available (in BG) at: <https://amalipe.bg/strategicheska-ramka-obrazovanie/>; of Association 'Education Bulgaria 2030', available (in BG) at: https://edu2030.bg/2021/01/06/stanovishte_strategy-2021-2030/; and of the Trust for Social Achievement, available (in BG) at: <https://socialachievement.org/bg/kakvo-pravim/novini/otnosno-stanovishte-i-preporaki-na-fondacija-tryst-za-socialna-alternativa-po-proekt-na-strategicheska-ramka-za-razvitiie-na-obrazovaniето-obucheniето-i-ucheneto-v-republika-byulgarija-2021-2030/286/>).

²¹⁰ SAC, Decision No. 6066 of 19 May 2021 in Case No. 8633/ 2020.

²¹¹ PADA, Article 6(1) and Article 37.

²¹² SAC, Decision No. 11862 of 20 December 2022 in Case No. 5167/2022.

requiring it to take the necessary measures in order to provide an accessible architectural environment and fined it BGN 250 (EUR 125).

It is not clear whether existing disability discrimination bans would be interpreted in court as an obligation to provide (design/manufacture) goods that are usable by persons 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).²¹³

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.²¹⁴ The provision is general, implicitly including housing. It covers all five grounds. Gender identity/expression or sex characteristics are not covered in national legislation.

In practice, refugees and migrants with irregular status face a variety of obstacles in finding and maintaining secure housing for themselves and their families. If a foreigner lacks identity and residence documents, they cannot work legally in order to provide for their basic needs, including housing. In addition, if the person does not have legitimate identification documents, Bulgarian landlords are far less likely to conclude an official rental agreement with them.²¹⁵

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)

²¹³ PADA, Article 6(1) and Article 37.

²¹⁴ PADA, Article 6(1).

²¹⁵ See Center for Legal Aid – Voice in Bulgaria (2022), *Final Report: Applying Engagement-Based Alternatives to Detention and Decreasing Irregularity in the Migration System* (update), available at: https://www.centerforlegalaid.com/file/files/fname/20220421-122006/%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD%20%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%90%D0%BB%D1%82%D0%B5%D1%80%D0%BD%D0%B0%D1%82%D0%B8%D0%B2%D0%B8%20%D0%BD%D0%B0%20%D0%B7%D0%B0%D0%B4%D1%8A%D1%80%D0%B6%D0%B0%D0%BD%D0%B5%D1%82%D0%BE%202022_%D0%B0%D0%BD%D0%B3%D0%BB%D0%B8%D0%B8%CC%86%D1%81%D0%BA%D0%B8.pdf.

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.

The 2012 ECtHR decision against Bulgaria in *Yordanova and Others v. Bulgaria* (collective forced eviction threatening Romani community)²¹⁶ 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.²¹⁷ With regard to the general measures, the Committee of Ministers expressed its deep concern about the lack of progress with the preparation of legislative amendments to respond to the indications of the European Court under Article 46 of the Convention and to the Committee of Ministers' Interim Resolution CM/ResDH(2020)357. The Committee also noted that judicial practice still appears insufficient to create a clear legal framework for proportionality assessment by the administration. The Committee of Ministers of the Council of Europe, during its 1443th DH meeting (20-22 September 2022), examined the execution of group of cases concerning interferences with the applicants' right to respect for their home or their private and family life as a result of eviction or demolition orders issued and reviewed under a domestic legal framework that did not require any proportionality assessment.²¹⁸

Bulgaria's failure to execute the landmark *Yordanova and Others* judgment over the course of a decade is 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 October 2022, the European Court of Human Rights delivered its judgment in *Paketova and others v. Bulgaria*.²¹⁹ The ECtHR found that there has been a violation of the prohibition of discrimination pursuant to Article 14, in conjunction with Article 8 of the ECHR, as a result of the authority's omissions resulting in ethnic Roma being driven away from their homes after anti-Roma protests and not being able to return. The 51 applicants were members of several Roma families. In January 2019, in their village, public protests began against the Roma inhabitants, following an incident earlier that day in which two members of the Roma community seriously injured a non-Roma member. After the village mayor told the Roma inhabitants to leave for their own safety, most of them fled that night and the rest on the following day. The protests continued in the following two weeks. The ECtHR held that the applicants' houses in the village, where they had been living before fleeing, constituted their 'homes' within the meaning of Article 8. The applicants' 'private and family life' was also affected, as their inability to live in their homes could have had repercussions on their community and family ties. Protestors had called Roma 'carrion' and 'pikeys' and had paraded the slogan 'This is Bulgaria, not Gypsyland', while some of those interviewed by the media had openly urged the Bulgarian population to unite and take things into their own hands if the authorities failed to do so. Many of the protests had been broadcast on television.

²¹⁶ *Yordanova and others v. Bulgaria*, No. 25446/06, 24 April 2012.

²¹⁷ See ECtHR, 'Country Factsheet: Bulgaria', available at: <https://rm.coe.int/1680709740>.

²¹⁸ See: [https://hudoc.exec.coe.int/eng/#{%22EXECIdentifier%22:\[%22004-1924%22\]}](https://hudoc.exec.coe.int/eng/#{%22EXECIdentifier%22:[%22004-1924%22]}).

²¹⁹ *Paketova and others v. Bulgaria*, Nos. 17808/19 and 36972/19, 4 January 2023.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In Bulgaria, national legislation provides for an exception for genuine and determining occupational requirements.²²⁰ 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 2019, in a case brought under the PADA by a blind person against a court chairperson and a judge for not appointing her to work as a juror in criminal cases, the SAC ruled *ex officio* to make a reference for a preliminary ruling to the CJEU.²²¹ 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: experience had shown 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'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 was decided by the CJEU in 2021: Article 2(2)(a) and Article 4(1) of Directive 2000/78, read in the light of Articles 21 and 26 of the Charter of Fundamental Rights and of the CRPD, must be interpreted as meaning that they preclude that a blind person be totally deprived of any possibility of performing the duties of a juror in criminal proceedings.²²²

Following the CJEU's ruling, in 2022 the SAC remanded the case to the PADC²²³ with instructions to gather evidence in order to verify whether the complainant was capable of performing as juror during the period, in which she was denied access to doing so, i.e. from March 2015 to August 2016.²²⁴ The PADC was to collect evidence on whether the cases heard by the respondent judge during this period required any visual assessment of evidence. Those cases are to be compared to cases in which the complainant performed as a juror in the period after August 2016. This evidentiary analysis is to address the issue of the necessity of eyesight in the case. However, following the passing away of the claimant and the waiving of the complaint by her successors, the PADC closed the case.

²²⁰ PADA, Article 7(1.2).

²²¹ SAC, Ruling of 25 July 2019 in Case No. 1084/2018.

²²² See Judgment of 21 October 2021, *TC and UB v. Komisia za zashtita ot diskriminatsia and VA*, Case C-824/19, ECLI:EU:C:2021:862.

²²³ Again, it should be noted that the SAC would have hardly been prevented from deciding the case on its merits rather than referring it back to the PADC.

²²⁴ SAC, Decision No. 7115 of 14 July 2022 in Case No. 1084/2018.

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.²²⁵ The exception is for 'different treatment of persons on grounds of religion, faith or gender with respect to an occupation carried out in religious institutions or organisations where, by reason of the nature of the occupation, or of the conditions it is carried out in, religion, faith or gender constitutes an essential and determining professional requirement in view of the nature of the institution or organisation, where the aim is legitimate and the requirement does not exceed what is necessary to accomplish it; [...]'. There is an inconsistency in wording between the directive and the PADA: rather than 'genuine, legitimate and justified', under the PADA the occupational requirement is 'essential and determining' (mirroring the wording for the GOR). 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'.²²⁶ This means that different treatment based on religion or belief or gender is allowed in access to religious education or training with no proportionality required. 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.

Yet, the SAC justified an age-based refusal by the commander of the military air force to include a man as a pilot, relying on the above exemptions under Directive 2000/78, among other exemptions, including the GOR.²²⁷

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.²²⁸ It makes a significant exception, however, for differential treatment based on nationality provided for under primary legislation.²²⁹ 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.²³⁰ In Bulgaria, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law.²³¹

In 2022, there was no relevant case law.

²²⁵ PADA, Article 7(1.3).

²²⁶ PADA, Article 7(1.4).

²²⁷ SAC, Decision No. 10131 of 6 October 2021 in Case No. 5640/2021.

²²⁸ PADA, Article 4(1).

²²⁹ PADA, Article 7(1.1).

²³⁰ PADA, Article 7(1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

²³¹ PADA, Article 4(1).

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.²³²

4.5 Health and safety at work (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,²³³ considering the specific dangers for employees with reduced work capacity.²³⁴ 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. Outside these exceptions, if direct discrimination arises, it cannot be objectively justified. 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.²³⁵ For the other three exceptions, the PADA requires proportionality.²³⁶

The first exception for age discrimination under the PADA, which is not subject to proportionality, is for pension ages, including occupational pensions.²³⁷ The second exception not subject to proportionality is for measures and programmes under the Employment Promotion Act.²³⁸ 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.²³⁹

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;²⁴⁰ 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;²⁴¹ and setting requirements for

²³² 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.

²³³ HSWCA, Article 16(1.2a).

²³⁴ HSWCA, Article 16(1.3).

²³⁵ PADA, Article 7(1.8-9) and (1.12).

²³⁶ PADA, Article 7(1.5-6) and (1.11).

²³⁷ PADA, Article 7(1.8).

²³⁸ PADA, Article 7(1.9).

²³⁹ PADA, Article 7(1.12).

²⁴⁰ PADA, Article 7(1.5).

²⁴¹ PADA, Article 7(1.6).

minimum and maximum age for access to training or education.²⁴² The latter exception may fall within the scope of Directive 2000/78/EC as it implicitly applies to vocational training.

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.²⁴³

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.²⁴⁴ The Supreme Court of Cassation (final instance in civil cases) (SCC) has produced similar case law.

In 2022, contrary to CJEU case law, 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.²⁴⁵ 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.

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.²⁴⁶ Examples include: positive measures, including employment promotion measures; special protection for underage employees/workers; maximum age requirements for access to student loans; age and seniority pension requirements; minimum and maximum age requirements for access to education and training (proportionality test); minimum age, professional experience and seniority requirements for being hired or for certain work-related advantages (proportionality test); maximum age requirements for being hired due to training requirements for the job, or to the need for a reasonable period of employment prior to retirement (proportionality test).

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.²⁴⁷ 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.

²⁴² PADA, Article 7(1.11).

²⁴³ PADA, Article 4(2).

²⁴⁴ SAC, Decision No. 611 of 12 July 2016 in Case No. 1541/2016; Decision No. 9699 of 1 November 2022 in Case No. 4540/2022; Decision No. 9927 of 7 November 2022 in Case No. 1415/2022.

²⁴⁵ For instance, SAC, Decision No. 9927 of 7 November 2022 in Case No. 1415/2022.

²⁴⁶ PADA, Article 7(1.5-6, 8-9, 11-12 and 14-15).

²⁴⁷ Social Security Code (*Кодекс за социалното осигуряване*), entered into force 1 January 2000, last amended August 2022 (as well as after the cut-off date for this report), Article 169(2) and Article 246(4).

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 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.²⁴⁸ 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.²⁴⁹ If the intern has a basic level of education or lower and no qualifications, the reimbursement period may extend to 12 months.²⁵⁰ 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.²⁵¹

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.²⁵² 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.²⁵³

In a landmark case, the SAC justified an age-based (mixed reasons) refusal by the commander of the military air force to include a man as a pilot, relying on the exemption under 6.1.c of Directive 2000/78, among other exemptions, including the GOR.²⁵⁴ The legitimate aims upheld by the Court included national and public security, and the operational capacity of the force for state defence. The proportionality analysis was scant and relied on the 'particular nature of the functions' of the force and the purportedly ensuing 'exclusive discretion' of its commander. Based on this, the restriction was said to 'not exceed what is necessary' without further reasoning.

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

²⁴⁸ Employment Promotion Act (EPA) (*Закон за насърчаване на заетостта*), adopted 20 December 2001, last amended June 2022, Article 36.

²⁴⁹ EPA, Article 41. An intern in this case is a person with professional qualifications but no work experience.

²⁵⁰ EPA, Article 41a.

²⁵¹ EPA, Article 55a.

²⁵² PADA, Article 7(1.5).

²⁵³ PADA, Article 7(1.6).

²⁵⁴ SAC, Decision No. 10131 of 6 October 2021 in Case No. 5640/2021.

years of service is taken into account too.²⁵⁵ For example, to be entitled to a retirement pension in 2022, a woman must be 61 years and 10 months old, and have 36 years and two months of service.²⁵⁶ If she does not have such a length of service, she must have a minimum service of 15 years and be 66 years and 10 months old.²⁵⁷ The relevant pensionable ages are different for women and men.²⁵⁸ There are also differences for certain professions and occupations and for the civil service.²⁵⁹ 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 60.²⁶⁰ As an exception, they can start collecting their occupational pensions five years earlier, provided that this is set in a collective agreement.²⁶¹ If an individual wishes to work longer, payments from such occupational pension schemes can be deferred, but this is unnecessary. An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

In Bulgaria, there are state-imposed mandatory retirement ages, but these are *not* generally applicable. In certain sectors only, such as the professional army,²⁶² academia,²⁶³ and the police,²⁶⁴ the relevant special laws or the Labour Code 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 (SSC) 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) or the Labour Code (academia) 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

²⁵⁵ Social Security Code, Article 68.

²⁵⁶ See: <https://ec.europa.eu/social/main.jsp?catId=1103&intPageId=4437&langId=bq>.

²⁵⁷ See: <https://ec.europa.eu/social/main.jsp?catId=1103&intPageId=4437&langId=bq>.

²⁵⁸ 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.

²⁵⁹ Social Security Code, Articles 69-69c.

²⁶⁰ Social Security Code, Article 243(4).

²⁶¹ Social Security Code, Article 243(6).

²⁶² 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 August 2022 (as well as after the cut-off date), 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.

²⁶³ Labour Code, 328 (1.10).

²⁶⁴ Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), entered into force June 2014, last amended August 2022, Article 226(1.1). The limit is 60 years.

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.²⁶⁵ 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.²⁶⁶ 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.²⁶⁷

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.²⁶⁸ 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).²⁶⁹

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

²⁶⁵ Labour Code, Article 328(1.10).

²⁶⁶ Labour Code, Article 328(1.10b).

²⁶⁷ Labour Code, Article 328(1.10a and 1.10c).

²⁶⁸ Labour Code, Article 328(1.10).

²⁶⁹ Labour Code, Article 328(1.10).

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.

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.

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*).²⁷⁰

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 2022 it is 64 years and five months,²⁷¹ 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*²⁷² and appeared to be capable of being justified as the age in question (as of 2022, 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.

²⁷⁰ Judgment of 12 January 2010, *Petersen v. Berufungsausschuss für Zahnärzte für Den Bezirk Westfalen-Lippe*, C-341/08, EU:C:2010:4.

²⁷¹ See: <https://ec.europa.eu/social/main.jsp?catId=1103&intPageId=4437&langId=bg>.

²⁷² Judgment of 22 November 2005, *Mangold v. Helm*, C-144/04, EU:C:2005:709.

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.²⁷³ 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.²⁷⁴ 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.²⁷⁵ 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).²⁷⁶

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.²⁷⁷ 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.²⁷⁸ 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 Further exceptions necessary in a democratic society: 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 (public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others). 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.²⁷⁹

²⁷³ Labour Code, Article 329(1).

²⁷⁴ Labour Code, Article 328(10).

²⁷⁵ Labour Code, Article 328(10a).

²⁷⁶ Labour Code, Article 328(10).

²⁷⁷ Labour Code, Article 222(3).

²⁷⁸ Labour Code, Article 222(1).

²⁷⁹ 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 persons with disabilities in training or education aimed at equalising their opportunities;²⁸⁰
- 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;²⁸¹
- special protection measures provided for by law for the benefit of parentless children, minors, single parents²⁸² and persons with disabilities;²⁸³
- 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;²⁸⁴
- 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.²⁸⁵

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,²⁸⁶ as well as to guarantee participation by ethnic minorities in education, whenever necessary to accomplish the objectives of equality law.²⁸⁷ Under Article 11, the PADA requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.²⁸⁸ 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.²⁸⁹ 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.²⁹⁰

There are a number of positive policy measures in place for the benefit of ethnic groups, in particular, Roma.

²⁸⁰ PADA, Article 7(1.10).

²⁸¹ PADA, Article 7(1.14).

²⁸² It would depend on judicial construction as to whether a same-sex couple where only one of the parties is recognised as a legal parent would count as a single parent for the purposes of special protection.

²⁸³ PADA, Article 7(1.15).

²⁸⁴ PADA, Article 7(1.16).

²⁸⁵ PADA, Article 7(1.17). The law does not specify the measures allowed. Any measure falling into this category is accepted.

²⁸⁶ As of 2022, there are no examples of where measures have been taken to equalise opportunities for LGBT individuals, among other vulnerable groups.

²⁸⁷ PADA, Article 11(1).

²⁸⁸ PADA, Article 11(2).

²⁸⁹ PADA, Article 24(1).

²⁹⁰ PADA, Article 24(2).

The case law has been ambivalent with respect to them. In one case, the SAC confirmed a decision by the SCAC, which had repealed a decision by the PADC, which in turn had upheld positive measures for Roma students.²⁹¹

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 another case, 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.²⁹²

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.²⁹³ 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 itself, which provided for independent living assistance to children with disabilities – the Council had failed to budget sufficient funds, 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'.

In 2022, the SAC continued the line of case law following the judgment in *Milkova* and 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 persons with disabilities.²⁹⁴ 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.²⁹⁵

b) Quotas in employment for persons with disabilities

In Bulgaria, national law provides for quotas for the employment of persons 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 persons with disabilities, *inter alia*.²⁹⁶ 'Accommodating' here means assigning current employees or

²⁹¹ 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.

²⁹² SAC, Decision No. 11441 of 3 September 2020 in Case No. 12748/2019.

²⁹³ SAC, Decision No. 155 of 7 January 2020 in Case No. 13509/2018.

²⁹⁴ SAC, Decision No. 4151 of 30 March 2018 in Case No. 494/2015.

²⁹⁵ SAC, Decision No. 5760 of 14 June 2022 in Case No. 1959/2022; Decision No. 11176 of 6 December 2022 in Case No. 5807/2022; Decision No. 10238 of 14 November 2022 in Case No. 5081/2022.

²⁹⁶ Labour Code, Article 315(1).

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 persons 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 persons 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 – when there are not enough persons 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 candidate with a disability who is qualified and cannot decline to appoint them on the ground that a person without a disability is already employed in the function. In that sense, jobs set aside for accommodating are placed at the disposal of persons with disabilities with an official accommodating indication. The employer has no duty to actually find persons 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 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 15 000 and BGN 20 000 (EUR 7 500-EUR 10 000)) (Article 414(4), 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),²⁹⁷ 32 859 positions were set aside; 18 756 of them for people with permanent disabilities; 11 083 posts were actually occupied by persons with disabilities and 11 829 by people with permanent disabilities; 5 381 positions set aside were advertised as vacant.²⁹⁸ 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.²⁹⁹ Authorities with more than 50 staff are bound to designate at least 2 % of all positions for people with long-term disabilities.³⁰⁰ Authorities with between 26 and 50 staff must designate at least one position.³⁰¹ Candidates for these positions compete only with other persons with

²⁹⁷ 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.

²⁹⁸ Available at: <http://ahu.mlsp.government.bg/portal/document/51085> (in BG).

²⁹⁹ Civil Servant Act, (*Закон за държавния служител*) entered into force 28 August 1999, last amendments December 2020, Article 9a.

³⁰⁰ Civil Servant Act, Article 9a(1.1).

³⁰¹ Civil Servant Act, Article 9a(1.2).

disabilities.³⁰² 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.³⁰³

The People with Disabilities Act (PDA) introduced additional employment quotas for persons 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 acquire disabilities). 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 2022, BGN 710 (EUR 355)). 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 Servant Act. The aforementioned quota is available only to people who have been officially assessed as having a disability and are registered as such.

³⁰² Civil Servant Act, Article 9a(1.2).

³⁰³ Civil Servant Act, Article 9a(1.3).

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 district (civil) courts.³⁰⁴
- Specialised quasi-judicial proceedings before the PADC, the independent equality body, with judicial review by two instances of administrative courts.³⁰⁵ This is complemented by a follow-up procedure for damages before the courts (administrative courts for public-law respondents and civil courts for others).³⁰⁶

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.³⁰⁷ 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.

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.³⁰⁸ 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 its decisions before the administrative court.³⁰⁹ Where complainants are unsuccessful, the court has been ordering them to pay the PADC staff attorneys' fees. The supposed reason

³⁰⁴ PADA, Article 71. Interpretative Decree No. 1 of 16 January 2019.

³⁰⁵ PADA, Articles 47, 50, and 68(1).

³⁰⁶ PADA, Article 74.

³⁰⁷ 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.

³⁰⁸ PADA, Article 53 and Article 75(2).

³⁰⁹ 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).

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 a landmark decision, the SAC at long last explicitly recognised that the PADA, as *lex specialis*, provides for a special rule on fees and costs, and parties are therefore exempt from both.³¹⁰ 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.³¹¹ In 2020, the SAC continued to confirm costs awards by lower courts to the detriment of losing parties.³¹² 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.³¹³ The Sofia City Court ruled that costs are due too.³¹⁴ Interpretative case No. 5 of 2021 was initiated by order of 21 December 2021, at the request of the Ombudsman of the Republic of Bulgaria, for the adoption of an interpretative decision on the question whether state fees are due in proceedings under the PADA. A decision is yet to be delivered. The reasoning the Ombudsman gave for her request was the fact that the case referred to her had involved a contradictory interpretation of the provisions of Article 75(2) of the PADA with regard to the chargeability of state fees under Article 227-*bis* or Article 235-*bis* of the Code of Administrative Procedure (CAP). She stated that there is no uniform view in the case law on the question whether a state fee under Article 227a or Article 235a of the CAP is payable in proceedings under the PADA. She asked for clarification of whether that applied to cassation proceedings against decisions of the PADC under Article 68 of the PADA.

Litigants are free to represent themselves in both judicial and PADC procedures.³¹⁵ Before the Supreme Court of Cassation a complaint only needs to be signed by a lawyer³¹⁶ 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.³¹⁷ 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.³¹⁸

³¹⁰ SAC, Ruling of 4 July 2019 in Case No. 6182/2019.

³¹¹ SAC, Ruling No. 7627 of 21 May 2019 in Case No. 7982/2017, Ruling of 18 July 2019 in Case No. 5927/2019.

³¹² SAC, Decision No. 5733 of 18 May 2020 in Case No. 6405/2019.

³¹³ 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.

³¹⁴ SCTC, Ruling No. 261593 of 2 December 2020 in Case No. 12501/2019.

³¹⁵ 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.

³¹⁶ Civil Procedure Code (*Граждански процесуален кодекс*), Article 284(2).

³¹⁷ For instance, SAC, Ruling No. 10400 of 3 August 2018 in Case No. 12325/2017.

³¹⁸ Interpretative Decree 2/2014 of 19 May 2015.

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.³¹⁹ The Sofia City Court has 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.³²⁰

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 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.³²¹ 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 another case, 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 six years prior.³²²

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.

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).³²³ In 2021, 78 PADA-based cases were initiated out of a total of 3 693 filed with the relevant chamber.³²⁴ No statistics are available for the number of PADA cases decided. According to the report on the activities of Sofia City Administrative Court in 2022,³²⁵ 78 PADA cases were initiated, of a total of 3 443 filed with the relevant chamber. 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.³²⁶ There are no statistics for the administrative courts hearing discrimination cases as a first instance (damage claims against public bodies). As of

³¹⁹ Interpretative Decree No. 1 of 16 January 2019.

³²⁰ SCtC, Decision No. 261079 of 9 November 2020 in Case No. 15323/2019.

³²¹ SCC, Ruling No. 219 of 14 March 2019.

³²² SCtC, Decision No. 828 of 30 January 2020 in Case No. 751/2019.

³²³ 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.admincourtsofia.bg/LinkClick.aspx?fileticket=ErdOUffDvZM%3d&tabid=252>.

³²⁴ See report (in BG) on the activities of Sofia City Administrative Court in 2021 (*Доклад за дейността на Административен съд София-град през 2021 г.*), available at: <https://sofia-adms-g.justice.bg/bg/1687>.

³²⁵ See report (in BG) on the activities of Sofia City Administrative Court in 2022 (*Доклад за дейността на Административен съд София-град през 2022 г.*), available at: <https://sofia-adms-g.justice.bg/bg/1687>.

³²⁶ Supreme Administrative Court, activity report for 2021, available (in BG) at: [http://www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/\\$FILE/%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%92%D0%90%D0%A1%202021%20%D0%BF%D0%BB%D0%B5%D0%BD%D1%83%D0%BC.pdf](http://www.sac.government.bg/home.nsf/0/3405C044C0A4A032C2257BEA003351D0/$FILE/%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%92%D0%90%D0%A1%202021%20%D0%BF%D0%BB%D0%B5%D0%BD%D1%83%D0%BC.pdf).

1 January 2022, 48 cases involving civil claims under the PADA were pending before the first instance civil courts. In 2022, 92 new cases on civil claims under the PADA were initiated. For the same period, 123 cases were decided by the first instance civil courts. Nine of them were entirely upheld by the court; eight claims were partially upheld; 39 claims were entirely rejected; one case was settled; and 66 cases were terminated for other reasons. The number of decisions appealed was 63. According to the statistics for 2022 before the administrative courts, a total of zero cases for judicial review of the decisions of the PADC were reviewed.³²⁷

For comparison, according to Supreme Judicial Council statistics for the district (first instance) civil courts, in 2021, 91 new cases were initiated under the PADA.³²⁸ In the same period, 141 PADA cases were decided. In seven of these, the claim was fully upheld; in nine cases, the claim was partially upheld; and in 35 cases, the claim was dismissed. Ninety cases were terminated and 57 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.³²⁹

In 2019, the SCC reported an increase in claims to establish discrimination nationally.³³⁰ 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.³³¹

In the SCC's own docket of PADA cases in 2019, there were 15 claims to find discrimination, and five claims for compensation.³³²

In 2020, 26 cases brought to establish discrimination were filed with the SCC, while two cases were filed for compensation for discrimination.³³³ In 2021, again, 26 cases brought to establish discrimination were filed with the SCC, and two cases were filed for compensation for discrimination.³³⁴

The SCC's report for 2022 has not been published 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

³²⁷ Supreme Judicial Council, Aggregated Statistical Tables on the Courts' Activities for 2022 available (in BG): <https://vss.justice.bg/root/f/upload/39/total-tables-2022.pdf> (Annex No. 111).

³²⁸ Supreme Judicial Council, Aggregated Statistical Tables on the Courts' Activities for first half of 2022 available (in BG): https://vss.justice.bg/root/f/upload/35/Obobshteni-statisticheski-tablici-2021_new.pdf (Annex No. 111).

³²⁹ 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-prilojenie2.pdf>.

³³⁰ Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019.pdf>.

³³¹ Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019-prilojenie1.pdf>.

³³² Supreme Court of Cassation, 'Statistical Data for 2019', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-zds-2019-prilojenie2.pdf>.

³³³ Supreme Court of Cassation, 'Statistical Data for 2020', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-na-zakona-2020-prilojenie1.pdf>.

³³⁴ Supreme Court of Cassation, 'Statistical Data for 2021', available at: <http://www.vks.bg/analizi-i-dokladi/vks-doklad-prilagane-na-zakona-2021-prilojenie1.pdf>.

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 2020, the PADC received 910 complaints and third-party motions, and instituted 592 sets of proceedings. It initiated 412 *ex officio* cases and rendered 728 decisions. It provided assistance to alleged victims of discrimination in 1 200 instances.³³⁵

There are no data for 2021 and 2022 yet.³³⁶

d) Registration of national court decisions on discrimination cases

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.³³⁷ Before the civil courts, trade unions and legal persons operating for non-profit purposes registered in the public interest may represent victims.³³⁸ Legal persons operating for non-profit purposes are foundations or associations.³³⁹ Those which self-identify as acting in the public interest register in the Commercial Register and Register of Non-profit Legal Entities with the Registry agency under the Ministry of Justice.³⁴⁰ They are subject to stricter requirements.³⁴¹ 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.³⁴²

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.

³³⁵ PADC (2019), annual report for 2020, p. 6, available (in BG) at: <https://kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2020-bg.pdf>.

³³⁶ Letter from PADC, ref. No. 44-00-680/17.02.2023, provides the following figures: in 2022, the PADC delivered 565 decisions – 333 out of them became final; 318 decisions were not appealed; and 114 decisions were appealed before the administrative courts. In 2022, the SAC delivered 49 decisions and rulings as a last instance in proceedings for judicial review of PADC decisions. 20 decisions upheld the decisions of the PADC.

³³⁷ Administrative Procedure Code (Административнопроцесуален кодекс), April 2006, last amended December 2022, Article 18(2).

³³⁸ PADA, Article 71(2).

³³⁹ Legal Persons for Non-profit Purposes Act (Закон за юридическите лица с нестопанска цел) (LPNPA), October 2000, last amended December 2020, Article 1(2).

³⁴⁰ LPNPA, Article 2(1 and 2).

³⁴¹ LPNPA, Chapter 3.

³⁴² LPNPA, Article 38(1) – specifies which activities qualify as public interest ones.

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.³⁴³ 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.³⁴⁴ No special requirements apply; incorporation is enough. However, under settled Supreme Administrative Court case law, 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.³⁴⁵ 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 a landmark case, the SAC heard a case brought by an 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).³⁴⁶ The case law is, therefore, contradictory.

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 2022, there were at least two public interest cases brought by activists and NGOs.³⁴⁷

³⁴³ PADA, Article 71(2).

³⁴⁴ PADA, Article 50(3).

³⁴⁵ 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.

³⁴⁶ SAC, Decision No. 458 of 13 January 2020 in Case No. 5375/2019.

³⁴⁷ SAC, Decision No. 10036 of 9 November 2022 in Case No. 2747/2022; Administrative Court Yambol, Decision No. 94 of 18 May 2022 in Case No. 91/2022.

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.³⁴⁸ Such claims can be brought on behalf of *all* victims of a single violation where their 'circle cannot be exactly defined but is definable'.³⁴⁹ 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.³⁵⁰ 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.³⁵¹

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.

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.³⁵²

Implementation of the rule on shifting the burden of proof is emerging. While judges and the PADC regularly invoke the shifting of 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. Few cases are on record in which the ruling hinged on shifting the burden of proof. For example, there was a case in which the SAC held that an employee had been discriminated against based on her disability, as her employer had failed to prove a lawful reason for paying her a lesser amount for equal work.³⁵³

³⁴⁸ Civil Procedure Code, Article 379.

³⁴⁹ Civil Procedure Code, Article 379(1).

³⁵⁰ Civil Procedure Code, Article 380(3).

³⁵¹ Civil Procedure Code, Article 379(2-3).

³⁵² PADA, Article 9.

³⁵³ SAC, Decision No. 414 of 13 January 2021 in Case No. 9907/2020.

In recent years, the SCC has repeatedly ruled that: '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.'³⁵⁴ In 2022, the SAC held in one disability rights case that the very act of discrimination resulted in non-pecuniary damages, relying on Article 14 of the ECHR and on the PADA.³⁵⁵

In 2022, the SAC held that, in order for discrimination to be established on the ground of sexual orientation, the person who claims it must prove by full and overwhelming evidence that there is discrimination.³⁵⁶ Conversely, the SCC held that 'according to [this court's case law] pursuant to Article 9 of the PADA in antidiscrimination proceedings the claimant is required to prove the facts on the basis of which it can reasonable be assumed that he/she is victim of discrimination, and where he/she has done so the law places the burden of proof on the defendant to establish the opposite, namely that the complainant's right to equal treatment in a specific case was not violated. [...] After the claimant has proven facts, from which it can be concluded that there is discrimination [...] the defendant must prove primarily and fully that the right to equal treatment has not been violated'.³⁵⁷ In another case, the SAC pointed out that: '[T]he rule of Article 9 of PADA reverses the burden of proof in the presence of data in the basis of which in can be assumed that there is discrimination [...].'³⁵⁸

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.³⁵⁹ 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.³⁶⁰ 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.³⁶¹ Therefore, any person who assists any action against discrimination in any way is entitled to protection from victimisation.

The SAC has found victimisation based solely on the fact that the respondent had treated adversely the complainant following the latter's complaint to the PADC, i.e. the temporal relationship between the events, requiring no other proof of a causal link.³⁶² The Court held that, in this case, no comparator was needed, as victimisation could be 'logically' inferred from the overall conduct of the respondent. In this way, the court seemed to imply that in other cases a comparator might be needed, which would contradict the definition of victimisation under the directives.

³⁵⁴ For instance, SCC, Ruling No. 60512 of 18 June 2021 in Case No. 1285/2021, 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.

³⁵⁵ SAC, Decision No. 5409 of 6 June 2022 in Case No. 10249/2021.

³⁵⁶ SAC, Decision No. 10036 of 9 November 2022 in Case No. 2747/2022 (sexual orientation).

³⁵⁷ SCC, Ruling No. 557 of 16 June 2022 in Case No. 178/2022 (architectural inaccessibility); see also SCC, decision No. 74 of 25 May 2022 in Case No. 4046/2021.

³⁵⁸ SAC, Decision No. 2983 of 30 March 2022 in Case No. 12073/2021.

³⁵⁹ PADA, Article 5.

³⁶⁰ PADA, Additional Provision paragraph 1(3).

³⁶¹ PADA, Additional Provision paragraph 1(3).

³⁶² SAC, Decision No. 7293 of 16 June 2021 in Case No. 2405/2021.

In 2022, the SAC found victimisation based on the fact that the respondent had treated the complainant adversely following the latter's complaint to the PADC.³⁶³

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.³⁶⁴ While medium-sized and large businesses might not be deterred by these amounts, the bad publicity arguably motivates them to actively engage in proceedings and in settlements where complainants are open to the latter. PADC fines are not awarded to the victim as compensation but go to the PADC budget.³⁶⁵ Where a breach is repeated, the sanction is doubled.³⁶⁶ 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.³⁶⁷ The civil courts do not impose fines. They award compensation for damages (Article 71(1.3), PADA). They may also issue injunctions.

b) Compensation – maximum and average amounts

There is no maximum amount of compensation.³⁶⁸ 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. The Supreme Court of Cassation (SCC) has 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.³⁶⁹ In a landmark decision, the SCC reversed previously settled case law that in no cases, including discrimination cases, can legal persons incur, or claim, non-pecuniary damages.

In 2022, the SAC repealed a decision by the Sofia City Administrative Court and awarded non-pecuniary damages to a child with disabilities, incurred as a result of violations of Article 10, Article 11 and Article 4(3) of the PADA, namely discrimination on the grounds of disability in the context of a programme for free-of-charge use of a social service called 'Assistant for Independent Childhood'.³⁷⁰ The child obtained a decision by the PADC finding indirect discrimination and brought court proceedings, being awarded non-pecuniary damages in the amount of BGN 4 000 (EUR 2 000).

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

³⁶³ SAC, Decision No. 10759 of 24 November 2022 in Case No. 3177/2022.

³⁶⁴ PADA, Articles 78-80.

³⁶⁵ PADA, Article 83.

³⁶⁶ PADA, Article 81.

³⁶⁷ PADA, Article 76.

³⁶⁸ 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.

³⁶⁹ 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.

³⁷⁰ SAC, Decision No. 5409 of 6 June 2022 in Case No. 10249/2021.

finances 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.³⁷¹ Vis-à-vis public bodies that are found to have discriminated, the PADC has the authority only to make recommendations. However, in 2022, the SAC reached a different conclusion on the PADC's authority to issue injunctions to public bodies. It did so by upholding the SCAC's decision confirming the PADC's decision by which the latter, *inter alia*, issued an injunction to the Minister of Health to 'take all necessary measures to eliminate the de facto discrimination experienced by insured individuals with complete maxillary and/or mandibular dislocation outside the 65-69 age group. The outcome of these measures should be the establishment of criteria and guarantees for access to the relevant medical devices through full or partial payment by the state, irrespective of the age of the person.'³⁷² Furthermore, the first instance CSAC had clearly held that: 'PADC's decision in this part was adopted on the basis of Article 47 point 4 of the PADA and was addressed to the Minister of Health. It constituted an injunction which the PADC has the authority to issue in accordance with the aforementioned provision of the law.

³⁷¹ SAC, Decision No. 15498 of 14 November 2019 in Case No. 3959/2018.

³⁷² SAC, Decision No. 4036 of 27 April 2022 in Case No. 563/2022.

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

7.1 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. The services of the PADC are accessible on an equal basis to all. PADC procedures are exempt from costs, both state fees and expenses. Reasonable accommodation is provided to persons with disabilities. According to the PADC website, there are 23 operational PADC regional offices in 23 regional cities.³⁷³ In five of the country's 28 regions, the PADC is yet to establish a regional office.

7.2 Political, economic and social context of the designated body

There is no evidence of direct political interference in the PADC's governance (save for the fact that by choosing PADC members, the President and Parliament influence the body's subsequent performance). An annual report on the activities of the PADC for 2021 was not brought to Parliament for a debate and a vote.

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.

7.3 Institutional architecture

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

Under the PDA, the PADC takes part in the Monitoring Council established 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 persons with disabilities; periodic reviews and assessments of national legislation and bills, and practice in terms of compliance with the CRPD; and annual reports on the actions undertaken to implement the CRPD (PDA, Article 14).

The PADC serves as the OSCE National Contact Point for Hate Crime (NCPHC).³⁷⁴ 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.³⁷⁵

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

³⁷³ See: <https://www.kzd-nondiscrimination.com/layout/index.php/kontakti/2017-01-09-13-36-08>.

³⁷⁴ See: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1355-2019-02-19-15-14-36>.

³⁷⁵ See, *inter alia*, PADC (2020), *Годишен отчет за 2020 г.* (annual report for 2020), p. 60, available at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2020-bg.pdf>.

to protect and promote all human rights.³⁷⁶ 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]'.³⁷⁷ 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.³⁷⁸

7.4 Status of the designated body – general independence and resources

a) Status of the body

- Separate or other legal status or personality: the PADC is a collegiate body consisting of nine members, including at least four lawyers.³⁷⁹ It is expressly defined as having its own legal personality.³⁸⁰
- Selection of governing body: Parliament elects five of PADC's members, including the chairperson and deputy chairperson, and the President appoints four. Under rules adopted by Parliament and the President in 2017 governing nominations and selection procedures for PADC members, the only substantive criterion is having 'knowledge and experience in human rights protection' pursuant to Article 42(1.2) PADA. Under the President's rules, NGOs and individuals have standing to nominate candidates. However, the President's discretion in choosing among nominees remains legally unfettered and non-transparent. The 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 procedure, only MPs and parliamentary groups have standing to propose candidates. PADC members have a five-year term of office.³⁸¹ The PADC adopts its own regulations to govern its activities and structure, including its administration's competences and numbers.³⁸²
- Sources of funding: under the law, it manages its own budget, which is part of the state budget.³⁸³ The PADC adopts a draft budget for each subsequent year, which is consequently submitted to the National Assembly,³⁸⁴ which, for its part, adopts the budget in question with the State Budget Act for the respective year.
- Powers to recruit and manage staff: in accordance with its own regulations, the PADC chairperson establishes the structure of PADC's administration and the job descriptions of its employees.³⁸⁵ S/he appoints, promotes and dismisses employees³⁸⁶ and contracts external experts.³⁸⁷

³⁷⁶ 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>.

³⁷⁷ 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>.

³⁷⁸ 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>.

³⁷⁹ PADA, Article 41(1).

³⁸⁰ PADA, Article 40(3).

³⁸¹ PADA, Article 41(2).

³⁸² PADA, Article 46.

³⁸³ PADA, Article 40(3).

³⁸⁴ Regulations on the Structure and Activities of the Protection Against Discrimination Commission (*Правилник за устройство и дейността на Комисията за защита от дискриминация*), Article 7.9.

³⁸⁵ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9.5.

³⁸⁶ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9.6.

³⁸⁷ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 9.7.

- Accountability: The PADC is accountable to Parliament only. Under the law, it reports annually in writing to Parliament on its activities.³⁸⁸

b) 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'.³⁸⁹ 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.

As discussed above in section 7.3 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.

c) Resources

- The annual budget of the body: the annual budget of PADC for 2022 amounted to BGN 3 288 100 (EUR 1 682 228).³⁹⁰ The PADC's budget has been increasing steadily. From BGN 2 570 000 (EUR 1 285 000) in 2018,³⁹¹ it reached BGN 2 784 000 (EUR 1 392 000) in 2019.³⁹² In 2020, it was BGN 2 969 400 (EUR 1 484 700).³⁹³ In 2021, it was BGN 3 174 000 (EUR 1 587 000).³⁹⁴
- The share of the annual budget dedicated to the equality body mandate: 100 % of the annual budget is for the PADC, since it is an independent body with a standalone legal personality.
- The total number of staff of the body/bodies: The total number of PADC staff is 72;
- The number of staff dedicated to the equality body mandate: no information available.

7.5 Grounds covered by the designated body

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.³⁹⁵

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

³⁸⁸ PADA, Article 40(5).

³⁸⁹ PADA, Article 40(1).

³⁹⁰ State Budget Act 2022, Article 30(1).

³⁹¹ State Budget Act 2018, Article 29.

³⁹² State Budget Act 2019, Article 28.

³⁹³ State Budget Act 2020.

³⁹⁴ State Budget Act 2021.

³⁹⁵ PADA, Article 4(1).

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.

7.6 Competences of the designated body– and their independent exercise

a) Independent assistance to victims

The PADC is competent under the law to provide independent assistance to victims in filing their complaints.³⁹⁶ 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 PADA does not specify what PADC assistance to victims shall entail. While the PADC has powers under the PADA to collect evidence *ex officio*, including in proceedings brought by complainants,³⁹⁷ 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.³⁹⁸ 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.³⁹⁹ 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. 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. 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.

³⁹⁶ PADA, Article 47(9).

³⁹⁷ PADA, Articles 55-57.

³⁹⁸ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 20(1.1).

³⁹⁹ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 23(2.1).

Regional representatives provide advice to 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 persons with disabilities).⁴⁰⁰ 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.⁴⁰¹ 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).

In 2020, the PADC reported having provided advice to 325 persons electronically, and more than 1 200 discrimination victims by phone.⁴⁰²

The PADC reports for 2021-2022 are not available.

In terms of effectiveness, there appears to be no mechanism in place to evaluate the quality of victim advice and assistance provided by the PADC. The PADC provided no information on this when asked by the author of previous editions of this report. It is also unclear how the numbers of PADC-reported victim consultations correlate to the demand for victim assistance. It is also unclear what is done to assist victims, other than persons with disabilities, who are deterred from seeking assistance due to social isolation. PADC claims of outreach being done are not specific and no statistics are available.

b) Independent surveys and reports

The PADC does have the competence to conduct independent surveys and publish independent reports. The law expressly provides for this.⁴⁰³

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.⁴⁰⁴

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.

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. The latest annual report published on the PADC's website is the one for 2020.⁴⁰⁵ No information is available on any reports for 2021-22, or the reasons for their unavailability.

⁴⁰⁰ Regulations on the Structure and Activities of the Protection Against Discrimination Commission, Article 23(2)(1).

⁴⁰¹ PADA, Article 52.

⁴⁰² PADC (2020), *Годишен отчет за 2020 г.* (annual report for 2020), p. 89, available (in BG) at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2020-bg.pdf>.

⁴⁰³ PADA, Article 47(10-11).

⁴⁰⁴ Available at: <https://www.kzd-nondiscrimination.com/layout/index.php/layout-over-40-positions/publikacii/publikacii>.

⁴⁰⁵ PADC (2020), annual report for 2020, available (in BG) at: <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/KZD-ot4et-2020-bg.pdf>.

The PADC participated in the working groups for the development of the National Strategy of the Republic of Bulgaria for Roma Equality, Inclusion and Participation 2021-2030 and the Action Plan for 2022-2023, and submitted opinions.

The PADC is one of the institutions responsible for implementing Priority No. 5 of the National Strategy of the Republic of Bulgaria for Roma Equality, Inclusion and Participation 2021-2030, alongside various ministries and regional and municipal administrations. More specifically, according to the National Action Plan 2022-2023 for the implementation of the National Strategy,⁴⁰⁶ the PADC is committed to the implementation of seven activities: 1) training of police officers on human rights and ethnic group issues; 2) annual training at national and local level on police work with ethnic groups; 3) conducting research on the state of discrimination against the Roma population in the areas of employment, healthcare, housing, poverty levels, social security and exclusion; 4) conducting seminars/round tables on equality and non-discrimination of Roma women in Bulgarian society; 5) development of a programme for prevention, tolerance and integration of Roma; 6) involvement of the Roma community in prevention and non-discrimination in the process of collecting and analysing data on human trafficking and care of victims; 7) raising awareness of children and their families of children's rights as provided for by international and domestic law.

As of 2022, the PADC has not adopted an individual strategy, or strategies, on specific aspects of its mandate.

c) Recommendations

The PADC has the competence to make proposals and recommendations to state and municipal authorities for the suspension of discriminatory practices and for their abolition for violating the PADA or other equality law; submits statements on draft legislation regarding its compliance with anti-discrimination and recommendations; and publishes independent reports and makes recommendations of all matters in discrimination issues. The law expressly provides for this.⁴⁰⁷

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. 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.

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. 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.

⁴⁰⁶ See: <https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=6706>.

⁴⁰⁷ PADA, Article 47(6), 47(8) and 47(11).

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.⁴⁰⁸

d) Prevention, promotion and awareness-raising

The PADC has the competence in the prevention of discrimination and in the promotion of equal treatment,⁴⁰⁹ and to communicate with individuals and groups at risk of discrimination.⁴¹⁰ There is no publicly available data that shows that the PADC is exercising these competencies effectively and to their full extent; however, the 2021 and 2022 annual reports on the PADC's activity have not yet been made publicly available, as they have not yet been formally approved by the Parliament.

e) Other competences

The PADC is first and foremost a quasi-judicial body, hearing, investigating and deciding cases of discrimination, and imposing penalties and injunctions.⁴¹¹ It is also competent to take and join court cases.⁴¹² The PADC is further competent to provide non-binding opinions on draft legislation and policy,⁴¹³ keep a public register of its decisions and injunctions,⁴¹⁴ inform the public of equality law provisions⁴¹⁵ and undertake other activities as stipulated under its own regulations.⁴¹⁶

7.7 Legal standing of the designated body

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*.⁴¹⁷

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.

⁴⁰⁸ For instance, SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016.

⁴⁰⁹ PADA, Article 40(1).

⁴¹⁰ PADA, Article 47(12).

⁴¹¹ PADA, Article 47(1-4).

⁴¹² PADA, Article 47(5).

⁴¹³ PADA, Article 47(8).

⁴¹⁴ PADA, Article 47(7).

⁴¹⁵ PADA, Article 47(12).

⁴¹⁶ PADA, Article 47(13).

⁴¹⁷ 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.'

7.8 Dispute resolution

a) Quasi-judicial functions

In Bulgaria, the PADC is a quasi-judicial institution. Its decisions are binding.

i. Power to impose sanctions

It has power to impose fines (no compensation), as well as to issue remedial and preventive injunctions.

ii. Nature and level of sanctions that can be imposed

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.⁴¹⁸

iii. Possibility to appeal

PADC decisions are subject to judicial review by the administrative courts and the Supreme Administrative Court.

iv. Enforcement of binding decisions

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. In its 2020 report,⁴¹⁹ the PADC gives 51 examples of decisions that have been implemented. In some of the examples reported by the PADC, 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.⁴²⁰ In response, some parties send PADC financial evidence that they have paid their fine⁴²¹ 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 or sending photographs of the constructed facilities).⁴²² 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.⁴²³ 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.⁴²⁴

⁴¹⁸ Under Article 78(1) of the PADA, the maximum fine for a breach of equality law is BGN 2 000 (EUR 1 000).

⁴¹⁹ PADC (2020), annual report for 2020, available (in BG) at: [KZD-ot4et-2020-bg.pdf](https://www.kzd-nondiscrimination.com/KZD-ot4et-2020-bg.pdf) (kzd-nondiscrimination.com), pp. 51-55.

⁴²⁰ PADC (2020), annual report for 2020, p. 51.

⁴²¹ PADC (2020), annual report for 2020, p. 51. See also 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.

⁴²² PADC (2020), annual report for 2020, p. 51, available (in BG) at: See also PADC, 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 for 2015), pp. 81-83, available at: www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/Otchet_2015_KZD.pdf.

⁴²³ 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.

⁴²⁴ 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.

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.⁴²⁵ 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.⁴²⁶

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.⁴²⁷

Data for 2021-22 is not available, as the PADC has published no reports for those years. In 2020, the PADC reported⁴²⁸ its highest rate of collection of fines compared with all previous years: BGN 22 550 (EUR 11 275). The PADC furthermore received 44 written notices of measures implemented by respondents in execution of PADC injunctions. It sent 55 invitations for implementation.

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.

v. Implementation of non-binding opinions

Non-binding opinions have included recommendations, for instance, to amend discriminatory (secondary) legislation and internal regulations or administrative practice, including architectural environments. According to its 2020 report, the PADC issued 142 non-binding opinions, of which eight were reported to have been implemented.⁴²⁹ In one of the examples, the PADC issued a non-binding opinion for the maintenance of an accessible architectural environment. A notification was received, with attached photographs.

The parts of the PADC decisions containing non-binding opinions become final on the decisions being delivered.

Data for 2021-22 is not available, as the PADC has published no reports for those years.

b) Amicable settlements

In Bulgaria, the PADC has the competence to offer the parties to a discrimination complaint the possibility to seek an amicable resolution to their dispute. The process is led by the PADC itself. According to the PADA, the chair of the panel invites the parties to the proceedings to reach an amicable settlement. Should the parties agree to that, the chair of the panel appoints a hearing for amicable settlement proceedings.⁴³⁰ If, in the latter proceedings, a settlement is achieved, the PADC issues a decision approving the settlement and closes the case.⁴³¹ This decision of the PADC is final.⁴³²

In an *actio popularis* case brought against COVID-19 measures targeted at the Roma neighbourhood in a Bulgarian town, the PADC held that the measures consisting of aerial

⁴²⁵ 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.

⁴²⁶ 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.

⁴²⁷ 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.

⁴²⁸ PADC (2020) *Годишен отчет за 2020 г.* (annual report for 2020), p. 51, available (in BG) at: [KZD-ot4et-2020-bg.pdf](http://kzd-nondiscrimination.com/KZD-ot4et-2020-bg.pdf) (kzd-nondiscrimination.com).

⁴²⁹ PADC (2020) *Годишен отчет за 2020 г.* (annual report for 2020), p. 51, available (in BG) at: [KZD-ot4et-2020-bg.pdf](http://kzd-nondiscrimination.com/KZD-ot4et-2020-bg.pdf) (kzd-nondiscrimination.com).

⁴³⁰ PADA, Article 62(1).

⁴³¹ PADA, Article 62(2).

⁴³² PADA, Article 62(2) in conjunction with Article 69(3).

(by helicopter) and ground disinfection activities carried out exclusively in a Roma-populated area amounted to direct discrimination on the grounds of ethnic affiliation. In the course of those proceedings, one of the defendants (the Regional Health Inspectorate) had reached an amicable settlement with the applicant and had admitted that the impugned actions were discriminatory, thus the case was resolved vis-à-vis that party. However, the administrative court⁴³³ ultimately repealed the PADC decision vis-à-vis the other defendant (the relevant Municipality) and held that there had been no discrimination and harassment on the grounds of ethnic affiliation.

7.9 Procedural safeguards

Procedural safeguards do exist in respect of the way in which the PADC exercises its powers. The PADC's decisions in all cases (except the decisions approving amicable settlements) are subject to judicial review in two instances before the administrative courts and the SAC. Both the procedural and substantial aspects of the PADC's decisions are subject to judicial review. There are no specific safeguards to avoid, for instance, bias in cases where the PADC staff first provides assistance to a victim and then adjudicates the case brought by that same victim. The general safeguard that would address this issue is the judicial review of PADC's decisions.

7.10 Data collection by the designated body/bodies

a) Registration 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's annual report for 2020, 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: for example, the reports for 2021 and 2022 have not been published yet; the last report published was the one for 2020). According to the PADC, the PADC shall keep a public register of its decisions and injunctions.⁴³⁴

In 2020, the PADC received 910 complaints and *actio popularis* motions and instituted 591 proceedings.⁴³⁵ The PADC initiated *ex officio* proceedings on 412 occasions and rendered 728 decisions in total.⁴³⁶

The data for 2021-22 is not available (see above).

b) Equality data collection

In Bulgaria, the PADC does not collect general equality data, or at least it is not available to the public.

The PADC may request data from private persons, state and local authorities, which are obliged to provide the requested data and information, but only in connection with a specific case pending before the PADC.⁴³⁷ The existence of commercial or other secrets protected by the law cannot justify a refusal for provision of the requested information.⁴³⁸

⁴³³ Administrative Court Yambol, Decision No. 94 of 18 May 2022 in Case No. 91/2022.

⁴³⁴ PADA, Article 47(7).

⁴³⁵ PADC (2020), *Годишен отчет за 2020 г.* (annual report for 2020), p. 6, available (in BG) at: KZD-ot4et-2020-bg.pdf (kzd-nondiscrimination.com).

⁴³⁶ PADC (2020), *Годишен отчет за 2020 г.* (annual report for 2020), p. 6, available (in BG) at: KZD-ot4et-2020-bg.pdf (kzd-nondiscrimination.com).

⁴³⁷ PADA, Article 55(2).

⁴³⁸ PADA, Article 55(3).

When there is a reason for access to classified information, it is provided in accordance with the Protection of Classified Information Act.⁴³⁹

7.11 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.⁴⁴⁰ 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.).

⁴³⁹ PADA, Article 55(4).

⁴⁴⁰ 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, the numbers of complaints and third-party motions, the prevalence of certain protected grounds or fields, the number of decisions, including precedents and the possibilities for individuals to be assisted centrally and regionally.

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. 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 Equality, Integration and Participation of the Roma (2021-2030).⁴⁴¹ 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 existing discriminatory norms are set aside, other than litigation before the courts or the PADC.

⁴⁴¹ Available at: <https://nccedi.government.bg/bg/node/448>.

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.⁴⁴² 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.⁴⁴³ Formally, this provides a sufficient legal basis for bodies to revise any legislation that contradicts the PADA. In practice, this has not been done. A failure to do so could be challenged before the PADC on general non-implementation grounds under the PADA, there being no special provision on sanctions referring to this particular duty. The PADC could then, under the PADA, make a declaration and impose a sanction and also issue an instruction or recommendation for implementation.

The SAC has 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.⁴⁴⁴ 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.⁴⁴⁵ 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;⁴⁴⁶ and a number of cases where the SAC declared secondary legislation excluding certain categories of patients from fully-funded treatment for their diseases discriminatory,⁴⁴⁷ as well as other secondary legislation in breach of disability equality rights.⁴⁴⁸

The case law from recent years was contradictory in terms of whether the PADC or the courts could 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.⁴⁴⁹ 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.⁴⁵⁰ The Varna Regional Court ruled similarly.⁴⁵¹ 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.⁴⁵²

In 2022, no decisions are on record (relevant to the protected grounds covered by this report) that contradict the PADA's applicability to legislation.

In 2022, the SAC upheld a decision by the lower court annulling secondary legislation (a

⁴⁴² PADA, Article 6(2).

⁴⁴³ PADA, Article 10.

⁴⁴⁴ SAC, Decision No. 4159 of 30 March 2018 in Case No. 4591/2016.

⁴⁴⁵ 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.

⁴⁴⁶ PADC, Decision No. 144 of 28 March 2018 in Case No. 28/2018.

⁴⁴⁷ 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.

⁴⁴⁸ SAC, Decision No. 7706 of 11 May 2018 in Case No. 4602/2018.

⁴⁴⁹ SAC and SCC, joint Ruling No. 28 of 2 April 2019 in Case No. 5A/2019.

⁴⁵⁰ SCC, Ruling No. 424 of 31 May 2019 in Case No. 919/2019.

⁴⁵¹ VRC, Decision No. 1486 of 11 December 2019 in Case No. 1872/2019.

⁴⁵² 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.

municipal council regulation) on the procedure and conditions for granting lump-sum financial aid to encourage birth rates in a certain municipality in Bulgaria. That court confirmed that the disputed provisions introduced discriminatory requirements for persons enjoying the right to a lump-sum birth grant on the grounds of education (applicants had to have a completed secondary education) and age (applicants had to be at least 18 years old).

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).

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.⁴⁵³ The NCCEII is comprised of senior public officials and ethnic minority NGO representatives. Its tasks include promoting ethnic equality and raising awareness on discrimination.⁴⁵⁴ The NCCEII coordinates the implementation and carries out ongoing monitoring regarding the National Strategy of the Republic of Bulgaria for Roma Equality, Integration and Participation (2021-2030)' and the action plan for the strategy's implementation.⁴⁵⁵ 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.⁴⁵⁶ It develops and funds projects promoting equal access to education for ethnic minority students.⁴⁵⁷ It fundraises from donor institutions and receives a subsidy from the Ministry of Education's budget.⁴⁵⁸

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, persons 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, persons 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 persons with disabilities, and is charged with specific duties, such as maintaining a database of persons with disabilities.⁴⁵⁹

⁴⁵³ 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.

⁴⁵⁴ Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues, Article 2, available at: www.lex.bg/laws/ldoc/2135541318.

⁴⁵⁵ See: <https://nccedi.government.bg/bg/node/448> (in BG).

⁴⁵⁶ Decree N 4 of the Council of Ministers of 11 January 2005 establishing the CEICSEM, Article 1.

⁴⁵⁷ Decree N 4 of the Council of Ministers of 11 January 2005, Article 2.

⁴⁵⁸ Decree N 4 of the Council of Ministers of 11 January 2005, Article 9.

⁴⁵⁹ PDA, Article 10(3).

Within the MLSP, the Policy for People with Disabilities, Equal Opportunities and Social Assistance Directorate develops policy and programmes for vulnerable groups.⁴⁶⁰ At the MLSP, there is also a Social Inclusion Directorate.⁴⁶¹

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 information about any advocates demanding that such structures be created.

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

The National Strategy for Persons with Disabilities 2021-2030⁴⁶² and the Action Plan for the Implementation of the National Strategy were adopted by a decision of the Council of Ministers.⁴⁶³ The National Strategy is a strategic document, the implementation of which is meant to contribute to creating better conditions and opportunities for the persons with disabilities to exercise their rights and participate on an equal basis in the different spheres of public life. There is no information available in order to confirm whether the NGO sector has participated in the drafting of the strategy or not (and if yes, which specific NGOs have participated).

There are no national plans directed at LGBT equality.

⁴⁶⁰ 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.

⁴⁶¹ Administrative Registry, State Administration Information System, available (in BG) at: http://iisda.government.bg/ras/executive_power/ministry_organigram/87?verId=181203000000038001.

⁴⁶² Link to the portal for public consultations on the strategy: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1342>.

⁴⁶³ Decision No. 957 of 23 December 2020 of the Council of Ministers, available (in BG) at: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1342>.

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. In 2022, the PADC delivered 193 decisions finding and/or sanctioning discrimination within the framework of the campaign 'Accessible Bulgaria'. A total of 162 decisions became final, and 19 decisions were appealed before the administrative courts. 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 March 2021, the PADC made a formal decision to prioritise accessibility inspections in schools and kindergartens; it instituted 150 such cases as a result.⁴⁶⁴ As of 2021, the 'Accessible Bulgaria' proceedings reportedly total over 1 495, with 1 289 decisions being rendered, of which 1 125 are final. The courts repealed only 10 decisions. More than 90 places were awarded accessibility certificates.⁴⁶⁵ There is no public information for 2022.

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.⁴⁶⁶ 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.

Assuming that the above PADC initiatives are in progress, the above good practices would have remained relevant in 2022.

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

⁴⁶⁴ Information available at: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1817-3->.

⁴⁶⁵ Information available at: <https://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/2/1817-3->.

⁴⁶⁶ 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>.

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'.⁴⁶⁷ 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. The ECtHR has consistently held in Roma segregation cases that no waiver of the right to non-discrimination is possible.⁴⁶⁸ 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).
- EU law provides for a duty to ensure that reasonable accommodation is available to job applicants, but Bulgarian law does not provide for such a duty.

Case law

In breach of the *Firma Feryn*⁴⁶⁹ 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 affected by the impugned statements.⁴⁷⁰ '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.⁴⁷¹

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.⁴⁷² The SAC took this position in a similar Roma negative stereotyping case against the Prosecutor General.⁴⁷³

⁴⁶⁷ PADA, Additional Provision, paragraph 1(6).

⁴⁶⁸ 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.

⁴⁶⁹ Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV*, C-54/07, EU:C:2008:155.

⁴⁷⁰ 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.

⁴⁷¹ SCAC, Decision No. 4590 of 3 July 2019 in Case No. 4299/2019 – a case concerning an anti-Roma newspaper publication.

⁴⁷² SAC, Decision No. 13471 of 29 October 2020 in Case No. 8595/2020.

⁴⁷³ SAC, Decision No. 5610 of 14 May 2020 in Case No. 14676/2019.

These decisions contravene the 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.⁴⁷⁴

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

A. 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.⁴⁷⁵

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'.⁴⁷⁶ The SCAC has copied that approach.⁴⁷⁷ 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.⁴⁷⁸

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'.⁴⁷⁹ See section 2.4 a) for further detail.

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.⁴⁸⁰ Additionally, in another case, the SAC has held that a specific person treated more favourably had to be established.⁴⁸¹

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

⁴⁷⁴ See also: *Behar and Gutman* and *Budinova and Chaprazov*, judgments of 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.

⁴⁷⁵ 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.

⁴⁷⁶ 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.

⁴⁷⁷ 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.

⁴⁷⁸ SAC, Decision No. 12865 of 1 October 2019 in Case No. 5114/2018.

⁴⁷⁹ See, *inter alia*, SAC, Decision No. 1429 of 16 February 2022 in Case No. 6858/2021, Decision No. 2866 of 25 March 2022 in Case No. 5304/2021; Sofia City Court, Decision No. 262927 of 12 September 2022 in Case No. 13041/2020; Varna Administrative Court, Decision No. 167 of 17 February 2022 in Case No. 2515/2021.

⁴⁸⁰ 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).

⁴⁸¹ SAC, Decision No. 2922 of 27 February 2019 in Case No. 10318/2016.

age/seniority groups).⁴⁸²

– 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

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).

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 assumption. In 2022, as in previous years, in various unrelated factual contexts, the courts held that unequal treatment can be established only where there is an objective, actual presence of a protected ground.⁴⁸³

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.⁴⁸⁴ 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. Interpretative case No. 5 of 2021 was initiated by order of 21 December 2021, at the request of the Ombudsman of the Republic of Bulgaria,

⁴⁸² 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.

⁴⁸³ SAC, Decision No. 395 of 19 January 2022 in Case No. 8638/2021. See also 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.

⁴⁸⁴ See, *inter alia*, SAC, Decision No. 3348 of 8 April 2022 in Case No. 11164/2021; Decision No. 395 of 19 January 2022 in Case No. 8638/2021, Decision No. 1254 of 10 February 2022 in Case No. 8271/2021, Decision No. 1461 of 16 February 2022 in Case No. 10627/2021.

for the adoption of an interpretative decision on the question whether state fees are due in proceedings under the PADA. A decision is yet to be delivered.

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.

No issues of concern can be identified regarding the use of artificial intelligence in relation to the implementation of the national legislation transposing the directives, or regarding the regulation of artificial intelligence.

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

In 2022, there have been no significant developments in equality legislation.

12.2 Case law

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 14 July 2022

Name of the parties: *Z.P. v. M.L. and F.S.*

Reference number: Decision No. 7115 in Case No. 1084/2018

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=1965301&code=vas (in BG)

Brief summary: The case concerned a complaint by a woman who was blind and appointed as a juror that she had been discriminated against since she had not been allowed to take part in hearings in criminal cases for a certain period of time, the justification for that being her disability (blindness). The PADC found a violation of the PADA, and the court of first instance upheld that decision. The SAC referred a request for a preliminary ruling to the CJEU seeking interpretation of Directive 2000/78/EC. The CJEU held that the relevant EU provisions preclude that a blind person be totally deprived of any possibility of serving as a juror in criminal proceedings.⁴⁸⁵ Following the CJEU's judgment, the SAC quashed the PADC's decision and instructed the latter to re-examine the case, gathering evidence in order to establish beyond reasonable doubt whether it was necessary for the juror to be able to see in order to ensure a fair trial in the criminal cases to which the complainant was not admitted for the relevant period in order to justify unequal treatment due to disability, or whether it was possible to perform jury duty without prejudice to the rules of criminal procedure. However, in the course of the proceedings before the PADC following the referral by the SAC, the claimant passed away and their successors did not wish to continue the proceedings. The case was thus closed.⁴⁸⁶

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 6 December 2022

Name of the parties: CAPD v. L.N.

Reference number: Decision No. 11144 in Case No. 4423/2022

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=2032055&code=vas (in BG)

Brief summary: The SAC upheld a decision by the lower court quashing a PADC decision finding that there had been discrimination on the grounds of disability, in a case in which an individual had been rejected in attempting to register a company with the commercial registry, as she had failed to provide sample signatures due to her disability (and had wanted to provide fingerprints instead). The SAC found that there had been no unequal treatment, as all other individuals in a comparable situation would have also been rejected. This court further held that the individual concerned could resort to another remedy, namely to challenge the legal provision precluding the admissibility of fingerprint samples as being discriminatory vis-à-vis persons with certain disabilities.

⁴⁸⁵ Judgment of 21 October 2021, *TC and UB v Komisia za zashtita ot diskriminatsia and VA*, Case C-824/19, ECLI:EU:C:2021:862.

⁴⁸⁶ PADC, Decision No. 164 of 25 April 2023 in Case No. 397/2015 (delivered after the cut-off date for this report).

Relevant discrimination ground(s): Age, Education

Name of the court: Supreme Administrative Court

Date of decision: 20 April 2022

Name of the parties: C.C.P. v. R.G.V.T.

Reference number: Decision No. 3849 in Case No. 11488/2021

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=1891848&code=vas (in BG)

Brief summary: The SAC upheld a decision by the lower court annulling a municipal council regulation on the procedure and conditions for granting lump-sum financial aid to encourage birth rates in a certain municipality in Bulgaria. That court had confirmed that the disputed provisions introduced discriminatory requirements for persons enjoying the right to a lump-sum birth grant on the grounds of education (applicants had to have completed secondary education) and age (applicants had to be at least 18 years old). The SAC further held that application of the discriminatory requirement would result in direct discrimination within the meaning of the PADA. As the discrimination was direct, it was irrelevant to the dispute that the introduction of said measures was aimed at achieving objectives laid down by law.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 14 June 2022

Name of the parties: G.M. v. S.A.M.T.S.

Reference number: Decision No. 5760 in Case No. 1959/2022

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=1936636&code=vas (in BG)

Brief summary: The SAC quashed a decision by the lower court, which had in turn rejected the appeal of G.M. (a person with a disability) against an order of the Chairman of S.A.M.T.S. (a state agency), by which his employment was terminated pursuant to the Civil Servant Act due to redundancy. Relying on the CJEU's judgment in *Milkova*, Case C-406/15 (ECLI:EU:C:2017:198), the SAC held that if G.M. had been working under an employment relationship and not under a civil service relationship, and in so far as he suffered from a disease included in the relevant statutory provisions, he would have enjoyed protection against dismissal under the Labour Code. In that case, the SAC held, there was an unacceptable and unjustified differentiation between persons suffering from the same illnesses on the ground that they work under a different type of legal relationship (employment relationship and civil service relationship), where statutory protection in the event of dismissal applies only to employment relationships.

Relevant discrimination ground(s): Disability

Name of the court: Supreme Administrative Court

Date of decision: 6 December 2022

Name of the parties: K.D. v. E.E.A.

Reference number: Decision No. 11176 in Case No. 5807/2022

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=2033309&code=vas (in BG)

Brief summary: The SAC upheld a decision by the lower court, which had in turn annulled as unlawful an order of the director of E.E.A. (a state agency), by which the service of K.D. (a person with a disability) had been terminated. Relying on the CJEU's judgment in *Milkova* Case C-406/15 (ECLI:EU:C:2017:198), the SAC held that K.D., a civil servant who suffered from a disease included in the relevant statutory provisions, enjoyed protection against dismissal under the Labour Code.

Relevant discrimination ground(s): Sexual orientation

Name of the court: Supreme Administrative Court

Date of decision: 9 November 2022

Name of the parties: M.L.O.D v. D.I.

Reference number: Decision No. 10036 in Case No. 2747/2022

ECLI reference:

Address of the webpage: https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=2033309&code=vas (in BG)

Brief summary: In 2022, in a case concerning a comment in a TV broadcast made by an NGO manager about a billboard depicting a same-sex couple hugging each other, the SAC upheld a PADC decision finding that the comment 'these billboards are in violation of the Criminal Code and more precisely Article 149 – Article 155, according to which it is forbidden to incite to debauchery and lewd acts' did not constitute harassment on the grounds of sexual orientation. In order to reach that conclusion, the SAC held, *inter alia*, that the message was primarily an expression of personal opinion in line with the freedom of expression and the author of the comment was sharing their fears that 'norms of behaviour and upbringing that are contrary to traditional family values are being imposed on Bulgarian families and children's psyches'.

Relevant discrimination ground(s): Sexual orientation

Name of the court: Sofia City Administrative Court

Date of decision: 6 July 2022

Name of the parties: P.H.B. v. R.S.S.

Reference number: Decision No. 4631 in Case No. 12615/2021

ECLI reference:

Address of the webpage: <https://ecase.justice.bg/Case/CaseDetail/4b6741e3-76fc-3c9b-c225-87b10041bacd> (in BG)

Brief summary: In 2022, the SCAC upheld a decision of the PADC finding discrimination in the form of harassment on the protected ground of sexual orientation resulting from a news media anti-gay publication. The SCAC ruled that the article in question instilled a general negative image towards all non-heterosexual persons, giving judgmental assessments of their orientation and containing epithets with a negative meaning, which could undoubtedly damage the dignity of each of the representatives of that community and contribute to the creation of permanently negative and hostile attitudes towards each person with a different sexual orientation.

ANNEX 1: INTERNATIONAL INSTRUMENTS

Country: Bulgaria
Date: 1 January 2023

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

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 ?
Convention on the Rights of the Child	Yes 31 May 1990	Yes 3 June 1991	N/A	N/A	Yes
Convention on the Rights of Persons with Disabilities	Yes 27 Sept 2007	Yes 26 Jan 2012	N/A	No	Yes

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