COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

COMPENDIUM

CASE LAW OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

SOFIA, 2008

CONTENTS

INTRODUCTION

The Compendium "CASE LAW OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION" is published by the COMMISSION FOR PROTECTION AGAINST DISCRIMINATION of Bulgaria under "Public Awareness and Antidiscrimination Activities" project (VS/2007/0454), funded under EU PROGRESS Programme, implemented by the NATIONAL COUNCIL FOR COOPERATION ON ETHNIC AND DEMOGRAPHIC ISSUES as Project Promoter and the COMMISSION FOR PROTECTION AGAINST DISCRIMINATION and the NATIONAL OMBUDSMAN as Partners.

The Protection from Discrimination Act (PfDA) was adopted on 16th of September 2003 by the 39th National Assembly and entered into force on 1st of January 2004. The adoption of that Act is a major step in the process of approximation of Bulgarian legislation and the international and EU standards in the field of equality, equal opportunities, equal treatment and prevention and elimination of discrimination.

Prohibition of discrimination, protection against discrimination, development of equality and tolerance became a fundamental principle in the international community after the Second World War, launching a new age in proclaiming and protection of human rights and fundamental freedoms. With the adoption and signing of the Unated Nations Charter on 26th of June 1945, its entry into force on 24 October 1945 and the proclamation of the Universal Declaration of Human Rights on 10th of December 1948, human rights and fundamental freedoms are no longer subjected solely to national jurisdiction. After the Second World War, human rights are regulated also by international law. International standards on human rights and fundamental freedoms impose certain set of duties and obligations to states regarding the proclaiming, guaranteeing, observance and protection of internationally recognized rights in the domestic legislation. The right to equality before law and protection against discrimination for all persons constitutes universal right, recognized in UN Covenants on Civil and Political Rights and on Economic, Social and Culture Rights, UN Convention on Elimination of All Forms of Discrimination against Women, the International Convention on Elimination of All Forms of Racial Discrimination, the European Convention for Protection of Human Rights and Fundamental Freedoms.

The Treaty Establishing the European Community as a result of the commitment for economic and social progress of the EU Member States that with joint actions shall remove the barriers dividing Europe, are based on equality and non-discrimination principle with aim to guarantee development of democratic and tolerant societies in the European Community. The right to equal treatment and non-discrimination is furher developed in several Directives: Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, Directive 78/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, Directive 76/207/EEC of 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, amended with Directive 2002/73/EC of the European Parliament and the Council of Europe of 23 September 2002, Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, Directive 92/85/EEC of 19 October 1992 concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, workers who have recently given birth and women who are breastfeeding, Directive 97/80/EEC of 15

December 1997 on Shifting Burden of Proof in Sex Discrimination Cases, Directive 2000/78/EC of 27 November 2000 establishing the general framework of equal treatment in employment and occupations, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. To that aim have been adopted the Counicl Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia and the European Commission Decision of 19 June 2000 to gender balance within the committees and expert groups established by it.

Article 6 of the Constitution of the Republic of Bulgaria prohibits inequal treatment of persons who are born free and equal in dignity and rights. The same Constitutional provision states that all citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.

Before the adoption of Protection from Discrimination Act, the legal framework prohibiting inequal treatment was limited to fragmentated provisions in various legal regulations. The Protection from Discrimination Act has introduced a new and contemporary mechanism for protection against discrimination in material-legal and proceeding aspect. A new stage in the protection against discrimination, pursuant to a legislative act, was the establishing of the Commission for Protection against Discrimination as an independent specialized state body for prevention of discrimination, protection against discrimination and provision of equal opportunities, optional choice of body and order for protection (Chapter Three, Chapter Four - Section I of the Protection from Discrimination Act). Another progressive development of Bulgarian legislation for protection against discrimination was the expansion of protected subjects to not only physical persons but also civil associations and legal entities (Art.3 Para.2 of PfDA); legal establishment of the forms of discrimination (Art.Art.4 - 5 of PfDA); the exceptional actions that shall not constitute inequal treatment (Art.7); shared burden of proof in force for administrative proceeding and judicial proceedings alike (Art.9 of PfDA); the forms of discrimination of related individuals (§.1, p.9 of the PfDA Supplementary Provisions); measures for termination of the infringement, restoration of the initial situation before the infringement and refraining in future of further infringements; the option for initiation of proceeding for protection against discrimination for persons who are not direct victims of discrimination (Art.50, p.3 and Art.71, Para.2 and Para.3 of PfDA).

The adoption of the Protection from Discrimination Act has met the practical need of clear definition of concepts, order and procedure for protection against discrimination and has fulfilled the political criteria for full-fledged membership of the Republic of Bulgaria in the European Union. It also fulfilled country's international duties and obligations under several international treaties (universal and regional), under which the Republic of Bulgaria is a party, and considered political recommendations of the United Nations High Commissioner on Human Rights and of Commission against Racism and Intolerance of the Council of Europe for creation of antidiscrimination legislation and a national machinery – a body and procedures to combat and protect against discrimination.

The Commission for Protection against Discrimination (CPD) is a National Equality Body under the international duties and obligations Bulgaria has committed in relation to country's full legal membership in the European Union. By law, the CPD implements control over the implementation and observance of the Protection from Discrimination Act and other laws regulating equal treatment. CPD has the powers to investigate and decide on cases of discrimination, to impose compulsory administrative measures and sanctions in established infringements, to ordain termination of the infringement and restoration of the initial

situation, to give recommendations to governmental and municipal bodies for termination of discriminating practices and abrovation of their acts breaching the equality legislation, to give opinions on draft laws for their relevance with the antidiscrimination legislation and recommendations for adoption, abrogation and amendments of legal regulations related to equal treatment.

The Commission for Protection against Discrimination (hereinafter referred to as the Commission or the CPD) consists of nine members, at least four of whom are lawyers. Five of them are elected by the National Assembly, the Commission's Chairman and Deputy Chairman including, while the other four are appointed by the President of the Republic. the Commission's members have five-year mandate. Commission for Protection against Discrimination exercises its powers in Permanent Sitting Panels, specialized on different grounds by virtue of Article 4, Para.1 of PfDA, and in Full Panel that ordains decisions, mandatory instructions and recommendations.

This Compendium is comprised of 32 decisions of the Commission for Protection against Discrimination, pronounced between 2006 and 2008 on cases of utmost importance for Bulgarian society on the grounds by virtue of Article 4, Para.1 of PfDA – age, gender, sexual orientation, ethnic origin, religion, disability and multiple discrimination. Most part of those decision have entered into force, others at the moment of Compendium compiling are not final; however, each of them significantly contributes to the understanding of key concepts and to the creation of effective national antidiscrimination case law.

THE COMMUNITY PROGRAMME FOR EMPLOYMENT AND SOCIAL SOLIDARITY – PROGRESS (2007-2013)

The Decision no. 1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October 2006 and published in the OJ on 15 November 2006. Its overall aim is to support financially the implementation of the objectives of the European Union in the employment and social affairs area as set out in the Social Agenda and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

PROGRESS mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs an to build a more cohesive society. To that effect, PROGRESS:

- provides analysis and policy advice on PROGRESS policy areas;
- monitors and reports on the implementation of EU legislation and policies in PROGRESS policy areas;
- promotes policy transfer, learning and support among Member States on EU objectives and priorities;
- relays the views of the stakeholders and society at large.

The seven-year Programme targets all stake holders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA, Croatia, Former Yugoslavian Republic of Macedonia and EU candidate countries and Serbia.

For more information see:
http://ec.europa.eu/employment_social/progress/index_en.html
http://ec.europa.eu/employment_social/progress

EU Campaign to combat discrimination For Diversity. Against Discrimination.
For more information: www.stop-discrimination.info

European Commission: http://ec.europa.eu

Section I

Discrimination on the ground of age

1. Decision No. 24 dated 05.04.2007 on case file No. 122/2006 of CPD Five-Member Expanded Panel[1]

Discrimination on the ground of age in access to and supply of services
Discrimination in job recruitment on the ground of education
Art. 4, Para 1, Article 5 in relation to § 1, point 1, Article 7, Paragraph 1, point 13, Article 9, Article 12, Par. 1, Article 37, Article 76, Par. 1, point 1, Article 78, Par. 1 of PfDA

The considered tariff plan, the subscription of which was bound to consumers' age requirement, is only one of the numerous tariff plans in the frame of the mobile voicemail service offered by the mobile cell telecommunication network and consumers outside those age limits are not devoid of chance to use other tariff plans of mobile voicemail service, thus there is no infringement of provision one of PfDA Article 37, prohibiting refusal of provision of services based on grounds by virtue of PfDA Article 4, paragraph 1.

The tariff plan does not breach the principle of equal treatment but constitutes a measure under Article 7, Paragraph 1, point 13 of PfDA for equalizing of opportunities to persons in disadvantaged position, thus there is no provision of goods and services at less favourable conditions on the ground of age by virtue of second provision of Article 37 of PfDA

When announcing a vacant workplace for legal advisor, the employer has posed a requirement that candidates should have graduated a specific university, breaching the provisions of PfDA Article 12, Para 1 and commiting direct discrimination, expressed as less favourable treatment of potential candidates who have graduated other universities.

The tariff plan TV, radio and poster commercials and advertisements have been presenting violence acts perpetrated by older people over individuals of the targeted age group, implications for inadequacy, suggestions for change of radio station, offending the dignity of persons over the age of 26, creating hostile environment between various age groups and therefore constitute age-based harassment by virtue of § 1, point 1 of PfDA Supplementary Provisions and age discrimination by virtue of Article 5 of PfDA.

The proceeding is initiated by virtue of Article 50, point 1 and point 3 of the Protection from Discrimination Act following the signal of "Y" Foundation from the city of P., No. 000/00.00.0000 under CPD register, signed by the attorneys M. E. and Ch.

By Order No. 000/00.00.0000 of CPD Chairman is initiated case file No. 122/2006 on the grounds of age and education and assigned for consideration of Five Member Sitting Panel.

By Order No. 000/00.00.0000 of CPD Chairman, the proceedings on case file No. 122/2006 was united with a signal for discrimination on the ground of age, sent by V.L.H. from the city of S..

In the signal of Y Foundation, it is alleged that "various media announced that XXX EAD is creating a new mobile network entitled ZZZZ." The conditions that are to be met by consumers in order to join telecommunication service – ZZZZ plan are announced on the company website. Y Foundation considers that XXX EAD Company treats part of its consumers differently on the ground of age, stating that "persons over the age of 26 cannot benefit of that service under ZZZZ plan." It is also srtated that ZZZZ plan "provides many

[1] With Decision No. 236 of 09.01.2008 on administrative case No. 8046/2007 of SAC, the Decision in its fefuting part is confirmed, while in its other parts is repealed.

preferentials for consumers compared to other consumers" – they speak in group at price of BGN 0,01, do not pay monthly fee for provision of service.

Y Foundation alleges that the maximum age requirement constitutes discrimination by virtue of Article 4, Para 1 of the Protection from Discrimination Act and puts the rest of consumers over the age of 26 at less favourable conditions, which constitutes infringement of the provisions of Article 37 of PfDA.

Also, Y Foundation alleges that XXX EAD applies discriminating criteria when hiring employees, announced in the job advertisement in K. Daily of 24 June 2006. In the opinion of Y Foundation, the requirement for M.D. in law from the State University of Sofia "Sveti Kliment Ohridski" limits job applicants and constitutes inequal treatment by virtue of Article 4, Para 1 of PfDA and a separate infringement of Article 12, Para 1 of PfDA.

Y Foundation asks the Commission to establish those infringements executed by XXX EAD, to ordain termination of the infringements and to impose sanctions and administrative compulsory measures by virtue of Article 47, points 1, 2 and 3 of PfDA.

V.L.H. from the city of Sofia believes that the new ZZZZ tariff plan of XXX EAD constitutes discrimination on the age ground in regard with all persons outside the age group 14-26.

The complainant alleges that meanwhile agressive advertising campaign of the abovementioned service is launched, in "very apparent, agressive and abusive manner for persons outside the age group 14-26".

The requests to CPD refer to ordainance of mandatory instruction for termination of the infringements, elimination of the harmful consequences and for imposing of property sanction to the infringer.

As defendants have been constituted: 1. XXX EAD as legal entity that has possibly committed alleged infringements of PfDA while implementing its activity, and 2. The Executive Directors of XXX EAD - T.K., S.M., Y.V., P.V.P., N.N.N., in their capacity of persons liable for administrative violations by virtue of Article 24, Paragraph 2 of Administrative Violations and Sanctions Act for potential infringements of the Protection from Discrimination Act. The defendant has provided the necessary documents for identification of the Company, its legal status and authorization for procedure representation.

XXX EAD considers that no discrimination has been committed, presenting a written opinion explaining the measures and justifications for launching of ZZZZ tariff and the considerations behind the requirements in referred job advertisement. The procedure representatives of XXX EAD request termination of the initiated case file, since no infringements of PfDA have been committed.

The Sitting Panel conducted four open hearings, where parties participated directly and through their authorized representatives. Before the first open hearing, the Board's Chair suggested reconciliation by virtue of Article 62 of PfDA to the parties, which was refused by the complainants.

After consideration of arguments and collected evidence in the course of investigation and closed hearing, the Five Member Expanded Sitting Panel of the Commission established as follows:

Four groups of grievances of the four complainants have been found.

Firstly: Grievance of the V.L.H. from the city of S., for discrimination - refusal of provision of services on the ground of age.

Secondly: Grievance of Y Foundation for infringement of Article 37 of PfDA on the grounds of Article 4 Paragraph 1 of the Protection against Discrimination Act, the tariff plan ZZZZ for persons aged 14 - 26 puts other consumers of the Company at less favourable conditions.

Thirdly: Grievance of Y Foundation for discrimination in job hiring, constituting infringement of Article 12, Para 1 of PfDA, published in a job advertisement in K. Daily on 24 June 2006, limiting job applicants.

Fourthly: Grievance of the complainant V.L.H. from the city of S., for discriminatory "agressive advertising campaign" of that service, in a "very apparent, agressive and offensive manner for persons outside the age group 14-26".

The Five Member Expanded Sitting Panel of the Commission considers that grievances have been cleared in the course of investigation and open hearings through collected written and verbal evidence and opinions of the parties as follows:

On the first grievance: Considering telecommunications specifics as an infrastructure sector, the case should account also for the ideas, aims and principles of the specific sector legislation, namely with Telecommunications Act and EU regulations.

By virtue of the Telecommunications Act, XXX EAD has several individual licenses for different telecommunication activities, Individual license No. 000-00000 of 00.00.0000 (date of last amendments 00.00.0000) for telecommunications through public telecommunication mobile cell network under GSM standard with national coverage.

Through the telecommunication network, XXX EAD provides mobile voicemail service – transfer of voice in real time implemented through mobile network. The legal definition of relevant concepts is clarified in § 1 of the Supplementary Provisions of the Telecommunications Act. Mobile cell networks are not defined yet in accordance with requirements of EC sectoral legislation, thus duties and obligations of the Communications Regulation Commission (CRC) to decide on equality of the consumers of XXX EAD.

By virtue of Article 45, Paragraph 2 of the Telecommunications Act, with decision of the sector regulator, the Communications Regulation Commission (CRC) of 00.00.0000, XXX EAD is defined as operator with significant impact on the market of mobile voice services. In its capacity of such operator, XXX EAD has scpecific duties and obligations under the Telecommunications Act. Those duties and obligations include observance of equality, transparency and confidentiality principles only in the mutual connection of networks, while the control is left to the Communications Regulation Commission (CRC).

By virtue of Article 40, Para 2 of PfDA, the Commission for Protection against Discrimination monitors the implementation and observance of this or other laws regulating equality of treatment, thus The Specialized Permanent Sitting Panel considers that considered issue falls within CPD competences.

The mobile voicemail service is supplied to consumers - physical persons and corporative clients on subscription plan or as prepaid service. The service covers: transfer of voice in real time, free emergency calls, voicemail, conference calls, data transfer, short text messages (SMS, bSMS, 3G), receiving and sending of fax messages, asynchronous/synchronous data transfer in GPRS environment, ISDN network, access to Internet, exchange of files, etc., multimedia messages - MMS), and access to information services with added value, as well and additional services - subsidiary services to telephony, related to clients' servicing.

All those services are simultaneously accessible for each person using mobile voicemail service of the operator XXX EAD under each tariff plan.

Based on the above-said and presented by the defendant XXX EAD evidence on different tariff plans**:** *Economic tariff plan, Universal tariff plan, Business tariff plan, xxxx 5, xxxx 20, xxxx LIGHT, xxxx EXTRA, xxxx RELAX 100, xxxx RELAX 300, xxxx RELAX 500, xxxx Time, Prima Classic, Prima Star and Prima Party* – the Five Member expanded Sitting Panel of the Commission accepts that ZZZZ tariff plan is only one of all tariff plans offered by XXX EAD as a mobile voicemail services delivered through mobile cell telecommunication network.

Thus, the defendant proved that the liability claim is ungrounded by virtue of Article 37 of PfDA - refusal of services provision. The exception of consumers outside set limits – i.e. age of 14-26, of ZZZZ tariff plan, does not deprive them to use other tariff plans of XXX EAD and use Company's mobile voicemail service.

On the second grievance: As complainants allege, XXX EAD has infringed the second provision of Article 37 of PfDA - provision of a service at less favourable conditions on the grounds stipulated in Article 4 Paragraph 1 of the Protection from Discrimination Act. In open hearing, Complainants state the opinion that the respective consumer group cannot be considered disadvantaged. In the written opinions, complainants state that the White Book presented by XXX EAD does not refer to all youth but only to students and is not based on a study of Bulgarian youth, thus the evidence is irrelevant. Complainants consider that only state bodies can take measures for adjustment of inequal position of persons but not of private company.

After considering presented evidence and relevant legislation, the Five Member Expanded Sitting Panel of the Commission established that:

EC White Paper – New Impetus for European Youth, a.k.a. the White Paper for Youth Policy in EU is elaborated by the European Commission and adopted in July 2001. Compiled after in-depth consultations and sociology surveys in EU Member States and the Republic of Bulgaria. Bulgaria is the only non-Member State that has participated in the consultations on all levels, through National Youth Council of Bulgaria.

As a practical measures necessary for preventive youth programs in Europe, the White Paper reads – "Introduce general use of "Youth Cards", ensuring that Europe as a whole is covered, with more reductions for young people, more services accessible with the card and better information on all these services".

The Republic of Bulgaria is one of the countries that have signed the European Social Charter (revised), ratified by the 38th National Assembly on 29.03.2000, in force since 1.08.2000 in Part I, Article 7 and 17 of the Charter, parties agree that "Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed", and "Children and young persons have the right to appropriate social, legal and economic protection." In Part III the Parties specify ways to accomplish special and economic protection – provisions are applied through laws and normative acts, agreements between employers or employers' organizations and workers' organizations, combination between those two approaches and other appropriate means.

In Article 17 of the Charter, **The right of children and young persons to social, legal and economic protection,** determines that "the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed".

Many EC documents - Directives, decisions, recommendations and the Treaty pay special attention to youth. Youth is described as a group with scpecific needs, risk group, group in disadvantaged position. Statistic and sociology surveys in the Republic of Bulgaria, commissioned by the government, confirm the European view - that group has low incomes, high unemployment rates, low or none vocational experience, inequal pay, threatened due to its limited experience and series negative phenomena of contemporary globalisation.

As a Party in the EU Accession Agreement, since October 2001 the Republic of Bulgaria is a full-fledged participant in the EU Youth programme. The Programme is aimed mostly at young people aged between 15 and 25. The main directions of Bulgarian state policy on youth are set in the priorities of the National Strategy on Youth Policy 2003-2007, endorsed by the Minister of Youth and Sport. The strategy is aligned with the European and international theory and practice on youth policy.

The Strategy through its annual programs aims at *Application of European modles for development of youth services and mobility to increase youth wellbeing.* The Strategy target group is youth aged 18 - 35, while the activities in point 6 "EUROPEAN YOUTH PROGRAMS" list "EURO < 26 - Development and popularization of the EURO < 26 system, as a form of youth services and youth mobility provision".

Such service networks in Europe express business' social responsibility to youth and constitute private organizations' participation in EC youth programs.

The Youth Policy in different European Member States follows varioys models – with different definitions and age limits of the youth group. According to specifics of matters concerned, Bulgarian law determines the ceiling of youth age as 25 (Art. 82 of the Family Code), 26 (Art. 40 of Health Security Act) to 35 (§ 1 of Supplementary Provisions of Youth and Sport Act). Legal definition of the term "youth" is found in the Youth and Sport Act – "Youth are persons aged between 18 and 35." - point 22, § 1 of the Act's Supplementary Provisions.

The EC Directives against discrimination explicitly state that banning discrimination as unlawful is not sufficient by itself, to provide equal opportunities for all in society. Tangible measures should be taken, compensating disadvantaged position resulting from racial or ethnic origin of a person, age and other personal traits, leading to unfair treatment. PfDA allows taking of active measures in that direction and does not consider those actions as infringement of the equal treatment principle.

Based on above-said, the Commission Five Member Expanded Sitting Panel finds that evidence provided by XXX EAD are relevant to the subject of investigation. The Commission agrees that the defendant XXX EAD has proved that ZZZZ tariff plan should not be considered as infringement of the equal treatment principle but as a measure by virtue of Article 7, Paragraph 1, point 13 of PfDA.

The Specialized Permanent Sitting Panel considers that the actions taken by XXX EAD for creation of ZZZZ tariff plan do not infringe the second provision of Article 37 of PfDA - provision of goods or services at less favourable conditions on the ground of age, stipulated in PfDA Article 4 Paragraph 1, thus also by virtue of Article 64, Para 1 and Article 65, point 5 establishes that no infringement of law has been committed.

On the third grievance: CPD Five Member Expanded Sitting Panel considers that the facts, circumstances and opinions of Parties on Y Foundation grievance for infringement of Article 12, Para 1 of PfDA, have been clarified in the course of investigation and open hearings through collected written and verbal evidence presented by the parties as follows:

In K. newspaper of 24 June 2006, an advertisement of XXX EAD was published for a vacant workplace of legal adviser, and the employer has set a requirement for diploma from State University of Sofia "Sveti Kliment Ohridski".

The Five Member Expanded Sitting Panel has found that the evidence presented by XXX EAD are irrelevant to the cases provided under Article 7 of PfDA, i.e. exceptions. Inconsistent are defendant's interpretations of the Labour Code implementation and justifications. The statement that "State University of Sofia "Sveti Kliment Ohridski" only refers to preference of the candidates who have graduated that university, is inacceptable.

The respective requirement, even if only as advantage, for appointment of legal adviser is not objectively justified' it is inconsistent for reaching of legitimate aim and limits the equal chances of potential job candidates.

EU Directives for combating discrimination, transposed in Bulgarian legislation with PfDA, stem directly from Article 13 of the Treaty. The European Commission underlines that discrimination can "impede the reaching of Treaty objectives, in particular reaching a high levels of employment and social protection, better living standards and quality of life, economic and social cohesion and solidarity". That could put at risk the European

Employment Strategy objectives aimed at "labour market that is favourable for social integration".

Provision of equal opportunities for everyone, equal chance for potential fulfillment and realized opportunities is a requirement transposed in Article 12, Para 1 of PfDA, that prohibits employers to set requirements related to the grounds by virtue of Article 4, Para 1, except in the cases of Article 7. That requirement is reconfirmed by the legislator and in other laws too, in order to ensure equality of chances and provision of high employment rates without discrimination.

Based on the above-said, the Commission Five Member Expanded Sitting Panel accepts for proven that XXX EAD has committed infringement of Article 12, Para 1 of PfDA, because announcing a vacant workplace, the employer has set requirements related to the ground of education, in particular diploma from a certain university.

The job advertisement published in K. newspaper on 24 June 2006 requires MD in law from the State University of Sofia "Sveti Kliment Ohridski", limiting job applicants possessing M.D. in law of other universities, who ate treated less favourable on the ground of education, since the requirement constitutes a formal reason for non-admission of candidates who have graduated law at another university.

There is no evidence of persons who have not been admitted to the competition on the reason. That they have not studied and graduated law at the State University of Sofia "Sveti Kliment Ohridski". From provided evidence it can be seen that among legal advisers recruited at XXX EAD there are graduees of other universities, too, but that cannot be proved under the procedure for selection of candidates, announced in K. Daily of 24.06.2006. In this case, there have been persons who have participated in the competition and have been affected by the announced conditions, which is not necessary, since the infringement of Article 12, Para 1 of PfDA is formal and does not require occurrence of harmful result. The infringement of Article 12, Para 1 of PfDA in that case is an isolated case of infringement by virtue of Article 4, Para 2 of PfDA on the ground of education, since it affects the rights of lawyers who have graduated universities other than the State University of Sofia "Sveti Kliment Ohridski"", to apply for the vacant workplace.

On the fourth grievance: CPD Five Member Expanded Sitting Panel considers that the facts, circumstances and opinions of the parties on V.L.H. grievance of for discrimination in the form of "agressive advertising campaign" of the abovementioned service, in a "very apparent, agressive and offensive manner for persons outside the age group 14-26" have been clarified in the course of investigation and open hearings through collected audiovisual, written and verbal evidence presented by the parties as follows:

The TV clips presented as files named "xxxx30" and "XXXX_xxx_30_adapted", expose an exaggerated hostility against the target group of ZZZZ tariff plan - young people. The division of groups is on the ground of age – the first group is comprised of young people, consumers of ZZZZ tariff plan, while the other group represents the others who are apparently older. Unlike the successful young persons. "the others are envious" since they cannot use ZZZZ tariff plan and are exposed as low-culture hostile group of people ready to manifest violence against young people, to harm their property, to attack them meanly.

As contents and implications, the TV spots are an example for targeted discreditation of the Other, using misleading and offensive approaches in order to proclaim the value of ZZZZ tariff plan. The clip does not reflect the traditional Bulgarian understanding for inter-generational relations or actual relations in society. The commercial shows in unfavourable context persons outside the target group, damages their image urging consumers to use the "extremely cheap" ZZZZ tariff plan. The clips show acts of violence, too.

The outdoor ads on buses and trams, copied as files "bus1", "bus2" and "tram" present inscriptions on the doors of public transport vehicles with the advertisement slogan

“Enter if you are under 26”. Radio spots presented as files “XXXX xxxx Mom4e 40” and “XXXX xxxx Rojden Den 40” contain the same advertising slogan, and those over 26 are advised “to change station” or that they are “unfit”.

It was confirmed that commercials have been commissioned and used by XXX EAD. The advertisements are provided by the procedure representatives of XXX EAD. Advertising campaign was launched in the summer of 2006 and continue by the moment of proceedings before the Commission for Protection against Discrimination.

Unintentionally or purposefully, the commercial evokes negative impact on consumers outside the target group, humiliates personal dignity of those people and breaches tolerance, degrading high ideas and values.

In its preamble, the Constitution of the Republic of Bulgaria emphasizes fidelity to human values and proclaims as utmost principle human rights and dignity.

Article 5 of the PfDA determines that harassment on the grounds of Article 4, Para 1, ground of age including, shall be deemed as discrimination. Legal definition of the concept can be found in point 1, § 1 of PfDA Supplementary Provisions - “Harassment” shall mean unwanted conduct on the grounds of characteristics under Article 4(1) and expressed physically, verbally or in another way targeting at or resulting in offending the dignity of an individual and creating a hostile, offensive or impending environment.

In the aforesaid sense, audiovisual and audio advertising clips of ZZZZ tariff plan constitute harassment by virtue of § 1, point 1 of PfDA Supplementary Provisions on the ground of age, constituting discrimination by virtue of Art.5 of PfDA, as unwanted behaviour, expressed, verbally and visually, offending the dignity of persons outside target age group 14 - 26, creating hostile environment through reproduced acts of violence committed by older persons, assessments for worthlessness and suggestions for change of radio station.

Similar is the implication of commercials stating “Join if you are under 26”, put at each door of public transport vehicles, offending the dignity of persons over the age of 26, since it affects their self-assessment regarding the right to use public transport and create hostile environment between age groups, trying to suggest that public transport is intended only for persons under 26. On the above-stated considerations, the advertisements “Join if you are under 26” constitute discrimination on the ground of age by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

It was confirmed that commercials have been commissioned and used by XXX EAD.

The provisions of Article 78, Para 1 of PfDA for discrimination, administrative coercion “fine” amounting from BGN 250 to BGN 2000 is envisioned.

Under this proceeding, the Commission established two different acts of discrimination, committed in the implementation of XXX EAD activities, namely:

1. On 24.06.2006, when announcing a vacant place for legal advisor in the newspaper “C.”, the employer XXX EAD has set a requirement to the applicants related to the grounds “education”, at which it has violated the provision of Article 12 paragraph 1 PfDA and has committed an act of direct discrimination on the ground of education by virtue of Article 4, Para 2 of PfDA, namely a less favourable treatment of possible candidates for the job, who have graduated the law faculty of another university.

2. In the summer of 2006, an advertising campaign of ZZZZ tariff plan has been launched, using audiovisual and audio advertisements and commercials in public transport stating “Join if you are under 26”, as described above, that constitute harassment by virtue of § 1, point 1 of PfDA Supplementary Provisions on the ground of age and discrimination by virtue of Article 5 of PfDA.

For the above-mentioned acts of discrimination, performed in the implementation of the Company activities, by virtue of Article 24, Paragraph 2, p.2 of the Administrative

Violations and Sanctions Act, the Company Executive Directors are liable, in their capacity of managers who have permitted the infringements.

Considering established circumstances under Article 27, Paragraph 2 of the Administrative Violations and Sanctions Act, relevant for estimation of the administrative sanction, the Commission requested each Executive Director to present a declaration. The requested declarations have not been presented and the Executive Directors, summoned in the proceedings as persons liable for administrative violations by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, did not express their opinion, in spite of provided opportunity.

On the first infringement, the Commission did not consider it very grave, since no refusal for access to the job interview has been found. Therefore, The Specialized Permanent Sitting Panel accepts that the minimum sanction is sufficient to reach its objectives. Sanction in that amount shall be imposed on each of the Executive Directors.

On the second infringement, the Commission considered that motives have been to promote the new tariff plan on the market and to present visually its advantages for the target group. Those inducements are natural considering the type of subject, i.e. trade company and its main reason to function and exist, i.e. commercial gain. The sanction, however, in order to play its role and restrain from similar infringements, is estimated around the average amount, according legally determined minimum and maximum of the sanctio "fine".

For prevention of future similar infringements of Article 12, Para 1 of PfDA, the Commission considers that by virtue of Article 76, Para 1, point 1 of PfDA it should apply compulsory administrative measures, instructing the employer when announcing vacant workplace for legal advisors to refrain from posing requirements for diploma of a certain university and when announcing other vacant workplaces to avoid posing requirements breaching the protected grounds by virtue of Article 4, Para 1 of PfDA, except in occasions by virtue of Article 7 of PfDA.

As of termination of the second established infringement, concerning ZZZZ tariff plan ads and commercials, the Commission considers that by virtue of Article 76, Para 1, point 1 of PfDA it shall impose compulsory administrative measures, ordaininh mandatory instructions to the Company Executive Directors for termination of using and broadcasting of the following commercials: TV advertising clips provided to the Commission on a CD-Rom with files "xxxx30" and "XXXX_xxx_30_adapted", radio spots, provided to the Commission on a CD-Rom with files "XXXX xxxx Mom4e 40" and "XXXX xxxx Rojden Den 40", and the advertising slogans "Join us if you are under 26", placed on the doors of public transport vehicles.

Therefore, the Commission for Protection against Discrimination in its Five Member Expanded Sitting Panel specialized on multiple discrimination, by virtue of Article 65 of PfDA.

D E C I D E D :

DISREGARDS the complaint lodged by V.L.H. from the city of Sofia in its part concerning the refusal for provision of services, at which it accepts that the defendant party XXX EOD., in compliance with Article 9 PfDA, has proofed that the right of equal treatment has not been violated, thus and by virtue of Article 64, Para 1 and Article 65, item 5 establishes that no violation of law has been committed in the hypothesis of Article 37 of PfDA

DISREGARDS the complaint of Y Foundation from the city of P. in its part concerning the provision of goods or services under less favourable conditions on the ground of age, accepting that the actions taken by XXX EAD for creation of ZZZZ tariff plan do not constitute infringement of the second provision of Article 37, PfDA - provision of goods or

services at less favourable conditions on the ground of age, stipulated in Article 4, Para 1 of the Protection from Discrimination Act, thus and by virtue of Article 64, Para 1 and Article 65, point 5 establishes that no legal infringement has been committed in that part.

ESTABLISHES that on 24.06.2006, when a vacancy for legal advisor was announced in K. Daily, the employer XXX EAD has set a requirement for applicants' education, i.e. master degree obtained at the State University of Sofia "Sveti Kliment Ohridski" " at which it has violated the provision of Article 12 paragraph 1 PfDA and has committed an act of direct discrimination on the ground of education by virtue of Article 4, Para 2 of PfDA, expressed as less favourable treatment of the potential candidates, who have graduated law at other universities.. IMPOSES to Y.V., born on 00.00.0000, citizen of A., as Executive Director of XXX EAD , by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act fines regarding the established violation, to the managers of XXX EAD, amounting to BGN 250 (two hundred and fifty levs) for the established infringement of Article 4, Para 2 of PfDA in conjunction to Article 12, Para 1 of PfDA..

IMPOSES to P.V.P., Identity number 0000000000, as Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 250 (two hundred and fifty) for the established infringement of Article 4, Para 2 of PfDA in conjunction to Article 12, Para 1 of PfDA.

IMPOSES to T.K., citizen of A., in the capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 250 for the above cited infringement of Article 4, Para 2 of PfDA in conjunction to Article 12, Para 1 of PfDA.

IMPOSES to N.N.N. holder of ID No. 00000000, as an Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 250 for the established infringement of Article 4, Para 2 of PfDA in conjunction to Article 12, Para 1 of PfDA.

IMPOSES to S.M., citizen of G., in the capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 250 for the established infringement of Article 4, Para 2 of PfDA in conjunction to Article 12, Para 1 of PfDA.

IMPOSES to XXX EAD, filed in the Commercial Register with Sofia City Court under No. 00/0000, compulsory administrative measures by virtue of Article 76, Para 1, point 1 of PfDA and PRESCRIBES to the employer:

1. When announcing a vacant place for jurists, not to set the requirement that the applicants have completed their higher juridical education at a specific University.
2. When announcing a vacant place, not to set requirements to the applicants, related to the grounds related to Article 4 paragraph 1 PfDA, except in the cases under Article 7 of PfDA

ESTABLISHES that the television and radio advertising clips concerning the ZZZZ tariff plan , which started in 2006, as well as the advertisement of transport vehicles, are acts of discrimination on the grounds of "age" by virtue of Article 5 of PfDA in relation to § 1, Item 1 of the Supplementary Regulations of PfDA on the ground of age.

IMPOSES to Y.V., born on 00.00.0000, citizen of A., in the capacity of Executive Director of XXX EAD , by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN

1000 (one-thousand levs) for the aforemendoned discriminatory act by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

IMPOSES to P.V.P. holder of ID No. 00000000, in the capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 1000 for aforemendoned discriminatory act by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

IMPOSES to T.K., citizen of A., in the capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 1000 for aforemendoned discriminatory act by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

IMPOSES to N.N.N. holder of ID No. 00000000, in his capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 1000 for aforemendoned discriminatory act by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

IMPOSES to S.M., citizen of G., in the capacity of Executive Director of XXX EAD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act a fine amounting to BGN 1000 for aforemendoned discriminatory act by virtue of Article 5 of PfDA in relation to § 1, point 1 of PfDA Supplementary Provisions.

IMPOSES to XXX EAD, filed in the Commercial Register with Sofia City Court with decision No. 00/0000, compulsory administrative measures by virtue of Article 76, Para 1, point 1 of PfDA, and PRESCRIBES to the Executive Directors in their capacity of persons in charge of appointing:

1. to terminate the use and broadcasting of television advertising clips, advertising radio clips and advertising texts, presented before the Commission on CD-ROM containg the following files – "xxxx30" and "XXXX_xxxx_30_adapted", radio spots, presented before the Commission as files "XXXX xxxx Mom4e 40" and "XXXX xxxx Rojden Den 40".

2. to remove advertising messages "Join if you are under 26" from public transport vehicles.

By virtue of Article 67, Paragraph 2 of PfDA determines period of 30 days counted from decision announcement, to take measures in implementation of given mandatory instructions and to inform the Commission on them.

By virtue Article 67, Para 4 of PfDA, this decision shall be sent to the Council on Electronic Media and the Consumer Protection Commission as institutions in charge with related issues, for advice and consecutive measures.

Imposed fines are subjected to payment in a bank account of the Commission for Protection against Discrimination in Bulgarian National Bank, Swift Code BNBGBGSD, IBAN - BG23 BNBG 9661 3300 1184 01.

The Decision is subjected to appeal by virtue of the Administrative Procedure Code through Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement.

Appeal of the decision does not terminate the implementation of the compulsory administrative measures imposed, namely the recommendations in that decision.

2. Decision No. 25 dated 05.04.2007 on case file No. 135/2006 of AD HOC Sitting Panel [2]

Discrimination in the provision of services on the ground of age
Art. 4, Para 1, Article 5 in relation to § 1, point 1, Article 7, Paragraph 1, point 13, Article 9, Article 37, Article 67, Paragraph 4 of PfDA

The tariff plan with subscription linked to consumers' age is only one of all tariff plans of a mobile voicemail service, supplied through mobile cell telecommunication network, and end consumers, outside the age limits, can use other tariff plans of the mobile voicemail service, thus there is no infringement of PfDA Article 37 first provision, prohibiting refusal of service- provision based on the grounds of Article 4, Para 1, PfDA.

The tariff plan does not breach equal treatment principle and constitutes a measure by virtue of Article 7, Paragraph 1, point 13 of PfDA, equalizing opportunities of disadvantaged persons, thus no provision of goods or services at less favourable conditions on the ground of age by virtue of second provision of PfDA Article 37 can be found.

The tariff plan commercials aired on TV, radio and put on public transport vehicles, that reproduce violence perpetrated by older people, worthlessness assessments, suggestions for change of radio station, offending the dignity of persons over the age of 26, create hostile environment between age groups and therefore constitute harassment by virtue of § 1, point 1 of PfDA Supplementary Provisions on the ground of age and discrimination by virtue of PfDA, Article 5.

The CPD established that ZZZZ tariff plan of XXXX EAD does not constitute discrimination by virtue of Article 4, Para 1, Article 4, Para 2 and Article 5 in relation to § 1, point 1 of PfDA and infringement of Article 37 of PfDA has not been committed.

The Commission accepts as proven that the defendant Company, in its capacity of advertiser has permitted advertisement leading to discrimination by virtue of Article 5, Paragraph 2 in relation to § 1, point 1 of the Protection from Discrimination Act Supplementary Provisions, which constitutes infringement by virtue of Article 78, Paragraph 1 and by virtue of Article 47, Para 4 of PfDA. The Commission recommends to the defendant to refrain in future from acts leading to discrimination and creating preconditions for such.

With CPD decision, the complaints and the signal in their part requesting to establish that ZZZZ tariff plan constitutes service that is refused to persons on age ground, are left without consideration.

The proceedings is initiated by virtue of Article 50, point 1 and point 3 of the Protection from Discrimination Act and Article 4, point 1 and point 3 of The Rules for Proceedings before the CPD, based on signal of M.M., Chair of X Association located in the city of S.and complaints of B.T.I. from the town of P., E.M.D. from the town of P., A.T.G. from the town of P., N.G.G. from the town of P., L.A.T. from the town of B., R.D.I. from the town of B., N.I.N. from the city of S., S.P.P. from the city of S.and N.J.G. from the city of S.

[2] With Decision No. 862 of 24.01.2008 under case file No. 7091/2007 of the Supreme Administrative Court, the Decision is confirmed in the abrogated part and abolished in the rest parts.

The signal and complaints meet the requirements of Article 51, Protection from Discrimination Act and Article 6, Paragraph 1 and Paragraph 2 of the Rules for Proceedings before the CPD.

The case file is initiated by Order No. 000 of 00.00.0000 of CPD Chairman and considering stated grievances for less favourable treatment on the ground of age, it was assigned for consideration to Ad Hoc Panel.

The signal and complaints grieve for violation of Article 37 of the Protection from Discrimination Act and allege for discrimination on the ground of age, committed by XXXX EOOD. According to complaints' and signal's authors, discrimination was aimed at each of them and also at relatively unlimited circle of individuals – actually everyone over the age of 26. Arguments are: On 1 August 2006, XXXX EOOD from the city of S.has started to supply SIM-cards with prefix 0000 under ZZZZ tariff plan, advertised as "the youngest network". By 31 August contractors under ZZZZ plan do not pay monthly tax and can talk in the group for BGN 0,01 per minute for 500 minutes. For contracts signed after 31.08.2006, the price for one minute of conversation for 500 minutes is BGN 0.05. The conditions in those tariff plans, compared to other offered by the same operator, are much more favourable. For joining to that tariff plan, XXXX EOOD has introdiced age limitations: ZZZZ consumers can be only persons between 14 and 26. By complainants' opinion, that fact constitutes discrimination.

Complainants allege that ZZZZ is not simply a tariff plan, like the other plans of XXXX EOOD, but a separate product, separate trade mark with separate logo, since the product is determined by its name, i.e. trade mark. In that sense ZZZZ is another service, defined and individualized by separate prefix and non-admission of persons over the age of 26 to that product constitutes measure by virtue of Article 37 of the Protection from Discrimination Act.

Meanwhile, XXXX EOOD has launched a media campaign that according to the complainants is marked by aggressiveness, impudence, brutality and neglect for elderly and pensioners, in particular, who are depicted as ridiculous, miserable, bitter, sarcastic and aggressive toward younger generations, since they cannot join the XXXX EOOD service. Complainants allege that ZZZZ by XXXX is promoted as a separate mobile network, another service (product), with the key commercial message that the service is accessible only for group of people defined on the age ground.

The defendant fully denies those allegations for discrimination on the ground of age. The defendant explained that ZZZZ is a tariff plan consistent with the provisions of Article 146 and Article 214, Paragraph 1 of the Telecommunications Act and aimed at a definite category of consumers. The provisions of Article 214, Paragraph 1 of that law are interpreted as opportunity for provision of different price packages and discounts depending on consumers' groups in observance of equality and publicity principles. Arguments in favour of that statement can be found in the provisions of Article 7, point 13 of the Protection from Discrimination Act stipulating that "specific measures for the benefit of disadvantaged individuals or groups of people on the grounds under Article 4(1) targeted at providing equal opportunities, as far as such measures are necessary" shall not constitute discrimination. In the context of that interpretation allege that the new ZZZZ tariff plan is aimed at persons between 14 and 26, treated as persons in disadvantaged position, since they have lower incomes and conditions for their full inclusion in society sgall be created. As example, the practice of "numerous airway, railway and bus companies" are cited, providing special offers and discounts for "youth". In that sense, the practice of European Youth Card Association (EYCA) is given as an example, with its 37 European countries; the EYCA provides a wide range of services, discounts and privileges for persons under 26 that promote their participation in community life, uniformity and use of pan-European services. EYCA

stimulates its Members to offer youth discounts for transport, accomodation, entertainment and discounts and privileges for services, aimed at raising their living standards.

Considering evidence on the case file, the specialized Ad Hoc Panel established the following: in various periods complainants have expressed desire to join the program, signing a contract for ZZZZ tariff plan of XXXX EAD but got refusal with the motive that this tariff plan is aimed at consumers aged between 14 and 26 years. The Specialized Permanent Sitting Panel assumes those facts for undoubtedly established, since they were confirmed by the defendant as well, who said that "as a rule" ZZZZ tariff plan services are only for persons in those age limits. Also, from enclosed evidence. i.e. General Terms of Regerence of ZZZZ tariff plan, it is evident that it applies "only for individuals aged 14 – 26" and in that sense are publicly announced in advance and do not need to be proved.

In relation to above stated, The Specialized Permanent Sitting Panel considers that it should be established whether the refusal of ZZZZ tariff plan contract with person over 26 breaches Article 37 of Protection from Discrimination Act, before answering the question if ZZZZ plan, aimed at certain age group consumers, constitutes discrimination.

The defendant – XXXX EOOD, is a trading company; with all pursuant specifics by virtue of Article 1, Paragraph 2, point 1 of the Trading Act and participates in economic turnover. Basic principles in civil legal and trade legal relations is freedom of agreement and autonomy of private-legal subjects. According to Article 9 of the Law for Duties and Obligations, the parties are free to decide on contract contents, as fas as they do not contradict legal imperative norms and good morals. The limits of contracting freedom are drawn by the imperative legal provisions and good manners. The Specialized Permanent Sitting Panel considers that ZZZZ tariff plan does not contradict morale and does not breach the imperative rule laid in the banning provision of Article 4, Para 1 of Protection from Discrimination Act. Justifications for that conclusion are as follows. It is known that in imperative norms are built upon the idea for protection and guaranteeing of public interest. Presence of unilateral and clarified-in-advance clauses in the contract, so-called general rules, is a common practice in trade. The suggestions aimed at persons of certain age group do not equate to discrimination and neglect to the rest age groups. From the enclosed written evidences it is evident that ZZZZ is only one of the optional price packages (tariff plans), intended for persons between 14 and 26. Similar practice is popular in the other EU states and the EYCA policy is only of one of numerous examples in that regard. Furthermore, the belonging to so-called social group does not depend on their studens' status but only on the age criterion.

Concerning complainants' allegations that the price parameters of ZZZZ plan are more favourable as compared to other price packages offered by XXXX EAD, therefore they should be considered discriminatory over the rest age social groups, the Specialized Permanent Sitting Panel considers the allegation unproven. The provision of preferences or special measures for certain groups in society, united on age or other ground, does not result by all means to inequal treatment compared to other society members. That principle is laid in the Constitution of the Republic of Bulgaria and reflected in the provisions of Article 7 of the Protection from Discrimination Act.

Inequal treatment is established through comparison - Article 4, Para 2 of the Protection from Discrimination Act stipulates that direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1. In that sense, possible discrimination could not be established if complainants have been refused to join ZZZZ tariff plan, although they belong to the same age limit 14 - 26, or if other persons who are over the foreseen maximum age of 26, have contracts with XXXX EAD on ZZZZ plan.

In relation to the allegations that ZZZZ tariff plan actually constitutes service offered only to consumers aged between 14 and 26, which puts them in less favourable

position compared to the rest consumers, The Specialized Permanent Sitting Panel considers that the authority capable to pronounce opinion on that issue is the Commission on Telecommunications as an independent specialized state body implementing control and regulating telecommunications. The Specialized Permanent Sitting Panel leaves the complaint without consideration in that part.

As of complainants' request for establishing discrimination in the advertisement of ZZZZ plan, the Specialized Permanent Sitting Panel has fiund the complaints justified in their parts referring to advertisement through clips aired on BTV. The defendant did not manage to prove the opposite and did not meet the requirement of Article 9 of the Protection from Discrimination Act, sharing the burden of proof between the parties: In a proceeding for protection against discrimination, when persons, considering themselves victims of discrimination, have established facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

The Specialized Permanent Sitting Panel reckons that there is discrimination by virtue of Article 5 of the Protection from Discrimination Act in relation to § 1, point 1 of PfDA Supplementary Provisions with the following arguments. Advertising clips on BTV are notorious; they are facts of public media space; they became known to large part of society, The Specialized Permanent Sitting Panel including. The commercial contains elements on age-based confrontation; elderly image in the advertisement is repulsive, grotesque and pathetic: elderly who revenge, batter and attack young persons, because they are bitter and envious of the ZZZZ plan, in effect offends dignity of older people; creates hostile environment since opposes generations; creates offensive environment, because humiliate elderly; creates threatening environment, because it uses violence and instructs to violence; it instructs to negative attitude to elderly. That commercial imposes an aggressive ZZZZ plan, which in Panel's view constitutes infringement of politeness and morale; breaches the right to respectful and equal treatment of elderly members of society. Implementation of a policy aimed at certain social group is inacceptable if it is promoted through offensive means for the rest society members. The creation of objectively justified and comprehensive youth-oriented practices cannot be presented in the context of disregard to elderly, since it leads or can lead to their less favourable treatment and perception.

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of the Protection from Discrimination Act ad hoc The Specialized Permanent Sitting Panel of the Commission for Protection against Discrimination established as follows

DECISION

The Specialized Permanent Sitting Panel DISREGARDS the complaints and the signal in their part concerning the request to establish discriminating grounds in the ZZZZ of XXXX EOOD and violation of Article 37 PfDA. It ESTABLISHES that the ZZZZ tariff plan offered by XXXX EOOD is not a discrimination within the meaning of Article 4, paragraph 1, Article 4, paragraph 2 and Article 5 in conjunction with § 1, point 1 PfDA and no violation of Article 37 PfDA has been committed.

ESTABLISHES that the defendant party XXXX EOOD, in its capacity of advertiser, has committed actions, has admitted advertisement leading to discrimination within the meaning of Article 5, paragraph 2 in conjunction with § 1, point 1 of the Supplementary Provisions to the Protection from Discrimination Act, which is violation within the meaning of Article 78, paragraph 1 of the above Act.

ORDAINS by virtue of Article 47, point 2 PfDA termination of the violation, at which M-tel EOOD should in its capacity of advertiser undertake the necessary measures to stop broadcasting of that advertisement.

PRESCRIBES by virtue of Article 47, point 4 PfDA to M-tel EAD to refrain in the future from acts leading to discrimination and creating the prerequisites for such.

DISREGARDS the complaints and signals in their part concerning the request to establish that the ZZZZ tariff plan is a service and as such, it has been refused to persons on the grounds of age.

By virtue of Article 67, paragraph 4, Article 47 of the Protection from Discrimination Act and Article 2, paragraph 2 of the Rules of Organization and Operation of the Commission for Protection from Discrimination, it sends this decision to the Commission for Communications Regulation, in order to get familiarized with the case file, in connection with the allegations regarding violation of Article 146 and Article 214 of the Telecommunications Act.

By virtue of Article 67, paragraph 4 and Article 47 of the Protection from Discrimination Act, it SENDS THIS DECISION TO THE COMMISSION ON CONSUMER PROTECTION in its capacity of controlling authority for observing the Consumer Protection Act, provided under Article 191, paragraph 1 of the Consumer Protection Act, in order to get familiarized with the case file, in connection with the allegations, which have been established by The Specialized Permanent Sitting Panel, regarding unfair advertisement within the meaning of Article 39, point 1 of the Consumer Protection Act.

The Decision is delivered to the parties on the case file.

Decision is liable to appeal through Commission for Protection against Discrimination before the Supreme Administrative Court by virtue of Administrative Procedure Code within 14 days after it has been announced to interested parties.

3. Decision No. 83 dated 25.10.2007 on case file No. 85/2007 of the CPD Fifth Specialized Permanent Panel [3]

Discrimination on the ground of age
Chapter Six of the Family Code
Art. 4, Para 2 , Article 47, Para 2, Article 47, Para 4, Article 67, Paragraph 4, Article 76, Para 1, point 1 of PfDA
Art. 2, point 3 of the Adoptions Council Rules of Order
Regulation No. 4 dated 25 November 2003 for conditions and order of register- keeping of children for full adoption

Key objective of the Protection from Discrimination Act is to provide complete and comprehensive protection from discrimination. In this case, the lady complainant E.H. and her husband S.S. met all requirements set by the legislator for obtaining the right of adoption. When judging complainant's capacity to adopt a child, the Adoptions Council to Social Assistance Regional Directorate and its members, assigned with Order No. XXX dated XXX/2007 of the RSAD Director in the town of P., have committed discriminatory act against E.H., presuming that she is too old to "meet the needs of a child aged 3-5". That judgement is resultimg solely from members' personal beliefs, ignoring the Family Code provisions and the social report. The Adoptions Council ignored the fact that the lady complainant is married and that her husband S.C. could

[3] Abrogated with Decision No. 3605 of 27.03.2008 under administrative file No. 12610/2007 of the Supreme Administrative Court.

be an adequate parent too, responsible for his parental duties and obligations. In spite of the well-known fact that raising of children in facilities is unfavourable for them and that it is in best interest of every child to have a home, where it will be raised with parental care and in family environment, in spite of the positive social report and the fact that the lady complainant has met all legal requirements as a candidate for adoption, she could not realize her right solely because of the Adoptions Council subjective judgement that she was too old. The refusal of the Adoptions Council at the town of P. Chaired by L.T. to suggest a child for full adoption to the lady complainant and her husband constitutes direct discrimination by virtue of Article 4, Para 2 of PfDA

The proceedings on case file No. 85/2007 was initiated by Order No. 000 dated 00.00.2000 of CPD Chairman, by virtue of Article 51, point 1 of the Protection from Discrimination Act, under a complaint dated No. 00-00-00/00.00.2000 and complementary evidence No. 00-00-0000/00.00.0000 lodged by E.G.H., from the town of P. The case file was assigned for consideration to Fifth Specialized Permanent Panel, by virtue of Article 54 of the Protection from Discrimination Act.

Alleged violation: discrimination on the ground of age.

The proceedings on the case file are under Chapter Four, Section I of the Protection from Discrimination Act.

The Specialized Permanent Sitting Panel has established that the complaint constitutes adequate legitimate ground for initiation of proceedings. The Specialized Permanent Sitting Panel has not established the negative procedure provisions envisioned in Article 52 of the Protection from Discrimination Act, impeding initiation of proceedings.

The grievance is against Regional Social Assistance Directorate in the town of P. (RSAD) and its director L.T., that after filing a request for full adoption, the lady complainant and her husband have not been provided with a child for adoption, due to her older age.

ALLEGED VIOLATION:

E.H.G. alleged that after filing a request by the lady-complainant and her husband, for full adoption of a child from the register of children for full adoption at the Regional Directorate Social Assistance in the town of P., any suggestions have not been made, solely due to the advanced "age" of E.H.G (71). The tacit refusal of the Adoptions Council at the Regional Directorate Social Assistance and its Director happened after a completed, regulated procedure for investigating and elaborating a social report, reading that "the family is fit for a full adoption and raising a child".

The family has declared its will to adopt a boy aged 3 to 5. The lady complainant considers that the main reason for that discriminatory attitude was her older age (71). To be able to apply for adoption of a child, E.G.H. and K.R.S., who have been living together as a couple for 20 years, have contracted a civil marriage in 2005. They believed that being married, they would have bigger chance for approval as candidates for adoption and would be able to raise a child in family environment. The lady alleged that she and her spose have been very well off, E.G.H. is a practicing lawyer registered in the Bar and her husband works as a driver.

In 2005, E.G.H. filed an application for adoption in Children Protection Unit to Social Assistance Directorate in the town of P. She was told that she had every chance for adoption. The lady complainant has provided all necessary documents (23 pcs., according to the enclosed list). After the social survey of SAD, a "social report" has been drafted, concluding that the family is suitable for full adoption and raising of a child.

The Directorate has issued a permission No. X/2005 to E.G.H. and K.R.S. for entry in the Adoption register at RSAD in the town of P.

At the moment of complaint lodging at the Commission for Protection against Discrimination, no legal procedure for adoption has been started by RSAD.

The lady complainant alleges that in her presence the Principal of Children Facility "T." in town of P. Has stated that "by the end of 2006 all children have to be provided with family and home". L.T., director of RSAD in town of P. replied that if all children were adopted, she would have lost her job. The complainant alleges that Children Facilities staff fear of redundancies, if most of the children were adopted.

The lady complainant also alleged that at a meeting with the Head of Children Protection Unit, I.N. argued that "she would be dead when adopted child would need her the most".

In additional application No. 00-00-0000 of 00.00.2000, the complainant has clarified the following facts:

She attended a meeting in D.K in the end of 2005 and chaired by L.T. There, care for children nominated for adoption have been discussed. It was attended by Dr. A. V., director of the Children Facility "T.", D. K., director of Facility for Children without Parental Care, S. D. And the social worker I.K. from Social Assistance Directorate in the town of P.

Dr. A. V. said that for 2005, only two children for adoption have been suggested.

For two years, the lady complainant has not been suggested with a child for adoption. On that reason, she published an article in "X" newspaper, attached as evidence to the complaint.

In a conversation between complainant and L.T., director of RSAD–P., L.T. adviced the complainant to redirect to a 16-years old child with completed individuality.

The request made to the Commission for Protection against Discrimination, is to establish discriminatory treatment against the lady complainant on the ground of age, committed by Children Protection Unit in the town of P. and the Director of RSAD in the town of P., by deprivong her from the chance to adopt a child together with her spouse.

The lady complainant objects against the refusal, since the only legitimite limit in the Family Code concerns age difference of 15 years between a candidate for adoption and adoptee. She argued that her husband was younger and could raise a child.

E.G.H. requested the CPD Panel to consider her complaint and to ordain decision, imposing compulsory administrative measures to the Regional Social Assistance Directorate in the town of P. and to issue mandatory instruction for prevention of discrimination against her on the ground of age, and to impose property sanction by virtue of Protection from Discrimination Act.

On the case file, following evidence have been presented by the lady complainant:

1.Article, published in "X" newspaper under the title "I wand to raise a child, the State, however, disagrees" and subtitle "70-years old E.H.". There, the story of S. couple has been told, who have been living together for 20 years and have contracted a civil marriage in order to adopt and raise a child;

2. Family's Refferential letter by Dr. Ts.G.P.;

3. List of documents requested from candidates for adoption of a child.

For the investigation, documents and explanations of SA Directorate in the town of P. have been collected.

I. The initial reply of Social Assistance Directorate in P. Director is registered under No. 00-0000 of 00.00.2000 as a table of received applications for entry in the Register of candidates for full adoption 2005-2007, featuring 44 requests but not mentioning the application of E.G.H. and K.R.S. As annex, a copy of their dossier is presented – a set of documents, necessary for entry in the Register of candidates for full adoption of children.

Permission for entry is No. X/2005, issued by Social Assistance Directorate in the town of P. The "social report" is enclosed, showing the social survey of complainant and her

family and stating their suitability as candidates for adoption of a child. The report is drafted by virtue of Article 57a, Paragraph 1 - 3 SC, Article 21, point 13 of the Child Protection Act, based on application registered under No. XXX/2005. After the survey, five meetings with the complainants have been implemented and one with their guarantee. The conclusion of the social report reads: "E.G.H. and her husband K.R.S. are suitable to adopt a child of Bulgarian ethnic origin aged up to 5 years. They possess the necessary material, financial, healthy, moral qualities and psychic attitude to become parents. The are capable to cope with the process of adoption and ensuing difficulties."

Following Commission's explicit request, a second reply was sent by Social Assistance Directorate in the town of P. registered under No. 00-00-0000 of 00.00.2000. In a table to the reply, under number 8, the application of E.G.H. and her husband has been added, of 45 candidates in total. From presented documents it is apparent that family has applied as candidate for adoption on X.X.2005, registered under No. SP-XXX and that for 2005 it was the only family with a Court decision in force that has not adopted a child, of 15 candidates in total. The rest candidates have adopted children, without any time-sequence of entry in the register. After complainant's application, seven adoptions have occurred in 2005, compared to 30 new applications in 2006, one family and one single candidate have adopted a child.

II. A reply by the Director of RSAD in the town of P., to the Social Assistance Agency, registered under No. 00-00-000 of 00.00.2000 has been filed. Attached are excerpt of the Register of Adopters. Complainant's family has been filed in the register on 14.10.2005. Their request has been considered at three sittings of the Adoptions Council to RSAD, as follows: on 24.11.2006, 16.02.2007 and 31.05.2007. In the reply it is stated that the Adoptions Council members do not consider complainant's family as suitable candidates for adoption. Major motive is that "considering her age, the lady candidate for adoption cannot meet the needs of a child at desired age. As apparent from the excerpt, there is no other candidate for adoption at even close to her age, being in the same position on that ground." Order No. XXX/2007 for appointing of Adoptions Council members to RSAD town of P. is attached to the reply and the whole case file of E.G.H. family.

From presented documents it is evident that the Head of RSAD – P. has sent 13 applications to the regional court for complete adoption.

Constituted parties:

1. Complainant: E.G.H., town of P.;

2. Defendants:

- Director of Regional Social Assistance Directorate – P., to the Social Assistance Agency;

- Head of Unit Child Protection to SAD, town of P., I.N.

3. Interested Party

- Social Assistance Agency with the Minister of Labour and Social Policy represented by its Executive Director;

4. Witnesses in the proceedings on case file No. 85/2007:

- I.K., Director of Social Assistance Directorate, town of P.;

The Adoptions Council members to RSAD in the town of P. in panel according to Order No. XXX/2007:

- E.B.I., junior legal advisor in District Administration in the town of P.;

- Dr. A.B.G., director of Healthcare Regional Center in the town of P.;

- U.D.R., senior expert pre-school training to Regional Inspectorate on Education town of P.;

- A.Z.M., a psychologist in Children Protection Unit to Social Assistance Directorate in the town of P.;

- Dr. A.K.V., director of Facility for Medical and Social Care for Children aged 0-3 town of P.;

- D.K.Y., director of Facility for Children without Parental Care in the village of D.;

- M.B.S., director of Facility for Children without Parental Care in the town of T.;

- M.Y.D., director of SOS – children's village, S.D.;

Witnesses summoned by the complainant:

- T.G.P., from the town of P., roentgenologist;

- V.Y.V., from the town of P.

After investigation completion, the parties have been provided with an opportunity to familiarize with the collected proofs and evidence.

At the open hearing on X September 2007, witness' evidences relevant to the complaint of E.G.H., have been collected.

With her evidences, the lady witness Ts.P. confirms that after a long relationship, E.G.H. and K.R.S. contracted civil marriage in 2005, in order to fulfil their desire to adopt a child, and that the lady complainant has told her of her obstacles to adoption, mostly due to her age. The lady witness alleges that E.G.H. is in good physical and psychic health.

The lady witness A.B.G., Director of Healthcare Regional Center – P. and member of Adoption Council to RSAD in the town of P., in her capacity of a doctor (orthopedist) and member of Adoptions Council declared that complainant's age will prevent her to raise a small child (page 26 of the Record). According to her, the couple is more suitable for adoption of a child aged 12-14. (page 25 of the Record). They argued that small children are very lively, requiring good mobility and parents' physical activity. At the sittings, A.G. as Council member has expressed opinion that a child aged 3-5 should not be provided to complainant's family - Record No. X of the Adoption Council regular sitting of X.X.2006. In that case, the lady witness preferred certain child to be adopted by a single parent. When judging whether the couple is capable to adopt a child, the lady witness is heedless of the fact that the lady complainant applies together with her younger husband and believes that the candidate should be aged 35.

4. E.B.I., legal adviser in District Administration of P and member of Adoption Council with RSAD gave the following witness evidences on E.G.H. complaint: the couple shall not be provided with child aged 3 to 5 for adoption. Her conclusion is made independently of her personal experience in raising a young child together with her retired parents. For the best interests of a child aged 3-5, candidates for adoption should be aged 25-50, no matter if they are a married couple or not. In this case, she did not consider husband's age, since the main burden fell on the woman as wife and mother. The lady witness was not aware whether E.G.H. expanded family had supportive environment. She has not read the *social report* for candidate couple for adoption of a child, mentioning family relatives. The report was read by AC Chairman at the Council's sitting. The lady witness E.I. also did not o consider husband's age when judging if the couple is fit to adopt a child and considers as impediment for adoption the late registration of the complainant and her husband. She had to apply when she was in a more suitable age – 50 - 55 (page 41 of the Record).

5. The lady witness I.Y.K., director of Social Assistance Directorate - P., in her official capacity, has signed permission E.G.H. to be filed as capable adopter in the Register to RSAD-P. dated X.X.2005, alleges that the Directorate is responsible to check candidates' suitability to raise a child. Within three months, the Directorate has surveyed filed request and has pronounced its decision. The lady witness has appointed I.K. for social worker. In the social investigation was involved also the Head of Children Protection Unit, I.N. Social Assistance Directorate has completed its duties with drafting the social report and giving a permission for adoption. The conclusion reads that the complainant and her husband are

suitable to raise a child. The lady witness indicates that E.G.H., together with her spouse, is suitable to raise a child aged from 3 to 5.

6. The lady witness U.D.R., expert in pre-school training at the Regional Inspectorate on Education in town of P. and member of RSAD - P. In her evidences before the Specialized Permanent Sitting Panel has stated that complainant's application has been considered at several sittings of the Adoption Council, but at none of them the fact that she applied for adoption together with her spouse has been accounted for. U.R. considers that age cannot be impediment, if the candidate is in good health. Anyway, her choice was always in favour of younger candidate for adoption of a child. From her evidences it became evident that U.R. does not know complainant's family status (page 52 of the Minutes of the Hearing).

Considering above stated, collected on the case file evidence, considering opinions of the parties, and the relevant legal norms, the Second Specialized Permanent Panel has established the following:

In Bulgaria, adoption is regulated in Chapter Six of the Family Code, Regulation No. 4 of 25 November 2003 for the conditions and order for filing the register of children for full adoption, issued by the Ministry of Justice, Ministry of Labour and Social Policy (Prom. SG, issue 107 of 9 December 2003), Child Protection Act and Rules for activities of Adoptions Council, issued by the Minister of Justice, the Minister of Health, the Minister of Education and Science and the Minister of Labour and Social Policy (Prom. SG, issue 107 of 9 December 2003, in force since 9 December 2003).

A child can be adopted with its parents agreement for full adoption or when parents are unknown. Within three days of child's accommodation, the Head of the special facility shall notify in writing the respective RSAD for its entry in Register of children for full adoption. For children accommodated in adoptive family or at other persons, with explicit agreement of its parents or with unknown parents, the Head of Social Assistance Directorate by child's place of residence notifies in writing within three days since its accommodation the respective RSAD for child's entry in the register. Children raised in specialized facilities that have not been sought six months after expiry of accommodation period, are filed in the Register with decision of the Regional Court by facility location. In that case, the Head of specialized facility notifies in writing within three days the respective RSAD or prosecutor. With Regulation No. 4 of 25 November 2003, the rules and conditions for filing a register of candidates for full adoption and rules and conditions for filing and saving of the Register of children for full adoption are defined. Those registers are kept by the Regional Social Assistance Directorates.

Considering the complaint of E.G.H., Fifth Specialized Permanent Panel referred as source of information the Official Report for the first trimester of 2007, complied by the Inspectorate to Social Assistance Agency CEO, by virtue of Article 6, Paragraph 3, point 10 of the Rules of Organization and Operation of Social Assistance Agency. The report was uploaded on www.asp.government.bg/site-inspektorat-Doklad.htm. It reads that after 36 complex check-ups in regional units of ASA during the trimester,including in 28 Social Assistance Regional Directorates, it was established that: "Adoptions Council activities do not meet set requirements, frequent infringements of the Rules for activities are ommitted. The Registers of children for full adoption and adopters are not kept in accordance with the requirements of Regulation No. 4 of 25.11.2003". From data collected under case file No. 85/2007, it is evident that only in SOS village in S.D 70 children have been accommodated. Only two of them have been filed in the Register of children for full adoption to RSAD - P.

The Adoptions Council to RSAD is the collective body that has to judge the best interests and needs of each child filed in the Register for full adoption, and the candidates for adoption – their capacity to give parental care, to provide physical, mental and social wellbeing of the child. Information for personal and family status of the candidates for

adoption, their health status, social environment, motives for adoption, capacity to provide appropriate conditions for child's special needs and other circumstances are established by Social Assistance Directorate in the social survey that lasts 3 months.

As evident from collected materials and evidence, complainant's E.G.H. family has passed through the procedure and was recognized as fit to adopt a child (Social report No. OP-XXX of X.X.2005, drafted by virtue of Article 57a, Paragraph 1-3 of the Family Code, Article 21, point 13 of the Child Protection Act and united with the case file registered under No. 00-00-000 of 00.00.2000). After three-month investigation and 23 documents collected, it was concluded that "E.G.H. and K.R.S. are capable to cope with the process of adoption and related difficulties". The adoption procedure has started with their application (No. SP-XXX of X.X.2005) in Social Assistance Directorate, town of P. Five meetings with the candidates to adopt a childand their guarantees have been implemented. The procedure has continued by virtue of Article 57c of the Family Code. The Adoptions Council to the Regional Social Assistance Directorate in P. had three sittings: on 14.10.2005, 16.02.2007 and 31.05.2007. At those three sittings, Adoptions Council rejected the application of the lady complainant and her spouse, defining them as unsuitable to adopt a child. In the reply registered under No. XXX of X.X.2007 ASA - Regional Social Assistance Directorate in P., the major motive is that "because of her older age, the candidate cannot meet the needs of a child in the preferred age group ... As evident from the enclosed excerpt from the Register, there is no other candidate to adopt a child at even close to her age, representing a basis for comparison on that ground." That conclusion is confirmed by the attached Records of the Adoptions Council sittings (No. X of 24.11.2006, No. X of 16.02.2007 and No. X of 31.05.2007), united with case file registered under No. 00-00-00/20.08.2007.

By virtue of Article 2, point 3 of the Adoptions Council Rules for activities, in force since 9.12.2003, the Council considers dossiers of children and candidates to adopt them and decides for each child in the Register a suitable adoptive parent, according to legally laid down criteria. In accordance with the Family Code provisions, adoptive parent can be only legally able person who has not been deprived of parental rights and adoptive parent must be at least fifteen years older than the adopted. Evident from the investigation, E.H. family meets all legal criteria to apply for adoption of a child. Furthermore, the Family Code does not set an age ceiling for candidates; further argument is the provision of Article 52, Para 2 reads that the grandfather and the grandmother or one of them can adopt their grandchild only when they were born out of wedlock or both or one of the parents have died.

It is the Adoptions Council who decides which child is suitable for the candidate. In this case, the collective body represented and lead by its Chairman, considered solely "wife's age" as essential and crucial criterion. The fact that the lady complainant is married and that a family couple applies for adoption have not been considered. The fact that the husband is 50 years old and could raise a child as parent was not considered, as well. The CPD Panel considers that while forming its judgement for candidates' suitability on the three hearings, the Adoptions Council has not discussed the fact that the lady complainant is married, ignoring her husband's age and qualities as a candidate for adoptive parent and thus has treated unequally S. R. S. on the ground of "gender", as unable to raise a child because he is male. Crucial factor turns out to be the deep-rooted discriminatory practice that only women are responsible to raise children. The Specialized Permanent Sitting Panel considers that in other cases when wife's age is lower than husband's age, such difficulty would not have occurred. The Adoptions Council members in their witness evidences state that the age of 50 is suitable for adoption of a child.

The objective of Protection from Discrimination Act is to provide complete and comprehensive protection from discrimination. In that case, the complainant E.G.H. and her husband K.R.S. have met all legal requirements needed to obtain right to adopt children. The

Specialized Permanent Sitting Panel considers that the Adoptions Council to the Regional Social Assistance Directorate and its members appointed with Order No. XXX of X.X.2007 by the Director of RSAD in P., when estimating complainant's capacity to adopt child, have committed discrimination against E.G.H., assuming that she is too old to "meet the needs of a child aged 3-5". That judgement arose solely from the personal beliefs of Council's members who did not consider legal requirements or the social report. Furthermore, the Adoptions Council has fully ignored the fact that the lady complainant is married and that her husband K.R.S. could be good parent, taking his duties and obligations with responsibility. In spite of the well-known fact that raising of children in facilities is unfavourable for them and that it is in best interest of every child to be raised in a home with parental care and family environment, in spite of the positive social report and that the complainant met all legal requirements as a candidate for adoption of a child, she could not exercise her right only due to the Adoptions Council judgement that she was too old.

Considering the above stated by virtue of Article 64 in conjunction to Article 65 and Article 66 of the Protection from Discrimination Act, Fifth Specialized Permanent Panel of the Commission for Protection against Discrimination

DECIDED

ESTABLISHES that against complainant E.G.H. a direct discrimination within the meaning of Article 4, paragraph 2 PfDA has been committed, on the grounds of "age", by the members of the Adoptions Council with Chairperson, the Regional Directorate's Director for social assistance in the town of P.

ORDAINS by virtue of Article 47, point 2 PfDA, termination of such discriminational behaviour and attitude towards the lady-complainant committed by the Adoptions Council and the Director of Social Assistance Regional Directorate in realizing the right of the lady-complainant to adopt a child, under the conditions of full adoption, compared to other applicants.

RECOMMENDS, by virtue of Article 47, point 4 in conjunction with Article 76, paragraph 1, point 1 PfDA, to the Regional Directorate for Social Assistance, P. and the Adoptions Council to refrain in the future from discriminational attitude and behaviour in respect to E.G.H. in exercising her right of adoption pursuant to Chapter Six of the Family Code.

PRESCRIBES by virtue of Article 47, point 4 in conjunction with Article 76, paragraph 1 point 1 PfDA, to the Agency for Social Assistance under the Minister of Labour and Social Policy TO OBLIGE all regional directorates for social assistance to bring their practice in line with the PfDA and to refrain from acts of discrimination when applying the normative regulation in the adoption procedures.

SENDS this decision to the Minister of Labour and Social Policy, by virtue of Article 67, paragraph 4, as the authority having to do with the investigation made under the case file.

The Commission for Protection from Discrimination will realize a one-year MONITORING pursuant to Article 40, paragraph 2 PfDA over the activity of the Directorate for Social Assistance in P. and over the Agency for Social Assistance.

Decision shall be delivered to the parties on the case file.

Decision is liable to appeal before the Supreme Administrative Court within 14 days since its delivery to the parties, by virtue of PfDA Article 68, Paragraph 1.

4. Recommendation No. 1 dated 26.02.2008 on case file 44/2007, of Full Nine-member Panel of the Commission for Protection against Discrimination[4]

Discrimination on the grounds of age
Art. 4 , Article 47, Para 8 and 10 of PfDA
Art. 9 of Academic Degrees and Titles Act
Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

On suggestion for legislative amendment of Article 9 of the Academic Degrees and Titles Act due to discriminatory nature of the above cited provision.

I. The issue was raised before the Commission (CPD) in relation with proceedings for protection against discrimination, initiated by virtue of Article 50, point 1 in relation with Article 4 of the Protection from Discrimination Act (PfDA) and assigned to Fifth Permanent Sitting Panel, specialized on the ground of age. On 11.01.2008, Fifth Permanent Sitting Panel ruled Decision No. 1/11.01.2008, disregarding the complaint but suggesting to CPD Chairman to initiate proceedings by virtue of Article 38, Paragraph 1, "f" of the Rules of Proceeding before the CPD (RPCPD), i.e. – to conduct an independent investigation exercising its powers under Article 47, point 8 and 10 of PfDA, in relation with Article 38, Paragraph 1, "d" of RPCPD. The investigation shall find whether the above cited provision – Article 9 of the Academic Degrees and Titles Act (ADTA), is discriminatory on the ground of age. Consequences of Article 9 discriminatory nature has two negative results: a) unjustified unequal treatment of persons over certain age and b) incomplete implementation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (hereto: Council Directive 2000/78/EC) in the domestic legislation.

II. The Commission for Protection against Discrimination considers that an overall analysis of the provision of Article 9 of ADTA should be made in order to estimate whether introduced age limitation contradicts the Protection from Discrimination Act, and Council Directive 2000/78/EC.

On one hand, in accordance with Article 40, Paragraph 1 of PfDA Commission for Protection against Discrimination is an independent specialized state body for prevention of discrimination, protection against discrimination and provision of equal opportunities, thus the competent authority to decide whether Article 4, Paragraph 2 of PfDA has been violated.

On the other hand, by virtue of Art 249, Para 3 of the Treaty, a Directive is an act of the Community secondary legislation is binding. The Directive is binding for each Member State body, courts and specialized state bodies like the CPD including. In accordance with Article 10 of the same Treaty, Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community.

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, as stated in Article 13 of the Treaty establishing the European Community. In that sense, the Commission for Protection against Discrimination as a national specialized equality body, is obliged to monitor the proximity of Bulgarian

[4] In force.

legislation and the Equality Directives, so that the results of the the Directives shall not be impeded by the discriminatory provisions of the domestic legislation.

On those grounds, the following recommendation was elaborated.

III. Bulgarian Academic Degrees and Academic Titles Act regulates acquisition of academic degrees and academic titles, defining what requirements are to be met by candidates for a certain degree/title.

1. In the first place, we shall review the age limit for academic titles assistant and lecturer. According to ADTA Article 2, Paragraph 1, the academic degrees are Doctor, Doctor of Science, and under Article 3, Paragraph 1 of the same Act, academic titles are assistant/scientific researcher, Associate Professor/senior scientific researcher II degree and Professor/senior scientific researcher I degree. Academic title is also the title "lecturer" given to persons who teach special subjects in the Art academies and to persons who teach foreign languages and sports. Under Article 48 of the Higher Education Act, the academic lecturing positions are: for habilitated tutors – Associate Professor and Professor, for non-habilitated tutors - assistant, senior assistant and chief assistant. Non-habilitated tutors who can teach languages, sports, arts, etc. are the lecturer and senior lecturer.

In regard with the contests for assistants and tutors – the latter are announced by academic organizations after their academic council decision, if there are permanent positions (Art. 37.1 of the Rules for Implementation of ADTA - RIADTA). There is an obvious relation between the acquisition of academic title and the access to a certain position, i.e. to job. In that sense, the acquisition of academic titles assistant and lecturer is bound to the access of certain position. That interdependency is of key importance for the estimation whether the age limitation of Art 9 of ADTA is discriminatory.

Academic organizations are listed in Article 14 of RIADTA and the Universities are among them. The procedure for appointing of person on assistant or lecturer position is following – the university announces contest for assistant or lecturer position and applications of candidates are filed. According to ADTA Article 9, the academic title assistant is awarded to person of higher education, not over 35, and if having academic degree – not over 40 and has academic achievements.

Paragraph 2 of the same article stipulates that the age requirement also refers to the academic title „lecturer", except for tutors on special subjects in Art Academies.

The results are, as follows:

A. Persons under 35 can apply for the assistant and lecturer positions.

B. Persons aged 35 – 40, in order to apply for assistant and lecturer position, they should have an academic degree. In the same time, academic degrees are awarded ti persons with higher education who have defended a dissertation (Art. 4, Paragraph 1 of ADTA). In other words, if a person aged 35 - 40 does not possess academic degree, i.e. has not defended a dissertation, he/she cannot apply for the position „assistant".

C. Persons over 40 cannot apply for Assistant position. If a person wants to work in university, he/she has to defend dissertation and have minimum pedagogical experience in order to apply for the position Associate Professor. It is not clear how he/she is going to obtain that minimum pedagogical experience. In fact, the access of persons over 40 to tutoring in academies is severely limited.

2. Secondly, we shall consider the age limit for the title scientific researcher.

The same age limit is in force for the acquisition of the "scientific researcher" academic title. The title is bound by permanent position on the pay-roll. The procedure is similar; the only difference is that academic assistants take positions in other organizations, different from academies.

3. The provision of Art 9 of ADTA creates requisites for unjustified unequal treatment as it hampers qualified persons, especially those over 40, to apply for assistant, lecturer or scientific researcher position only due to their age.

Age limitation can lead also to another negative result. In compliance to Article 40 of ADTA, habilitated academic workers keep their academic titles after they leave their academic position. Per argumentum a contrario, non-habilitated academic workers (assistant, senior assistant and chief assistant) do not keep their academic titles after they leave their academic positions. The question arises whether an assistant with long-standing experience could apply again for assistant position in other university, after has abandoned the assistant position and has turned limit age. The interpretation of law gives negative answer to that question. That probably concerned the legislator as well, since according to Article 74.4 of RIADTA, the age requirement does not refer to cases when a non-habilitated researcher goes to a contest in that or other institution for that or other academic title.

In spite of that exception, the Commission for Protection against Discrimination considers that the age requirement in the legal provision limits the rights of persons with experience in certain scientific field and deprive academic society from top qualified employees and deprives students of experienced although older tutors. Candidate's qualities should be assessed in a contest, not by such a formal criterion as age.

According to the Ruling on case C-144/04 of the European Court of Justice in Luxembourg (hereto: ECJ), the non-discrimination principle on the ground of age should be viewed as a key principle of the acquis communautaire. By definition, the main principle for equal treatment or non-discrimination reads that comparable circumstances should not be treated differently, while different situations should not be treated equally. Persons in comparable situations, e.g. applying for assistant, lecturer and scientific researcher academic positions, have been treated differently only due to their age. Thus, the Commission for Protection against Discrimination considers that the abovementioned age limitation contradicts Article 4, Paragraph 2 of PfDA

III. Age discrimination according to Council Directive 2000/78/EC.

1. Article 1 of Council Directive 2000/78/EC stipulates that it aims to establish a general legal framework to combat discrimination on several grounds, including age in regard with employment. According to Article 3, Paragraph 1, Council Directive 2000/78/EC is applied in relation with employment and working conditions.

2. In its Preamble, the Directive (p. 11) states that discrimination based on age may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection. Point 12 stipulates that any direct or indirect discrimination based on age should be prohibited throughout the Community. Point 23 stipulates that in very limited circumstances, a difference of treatment may be justified where a characteristic related to age, constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. The last exception is laid down in Article 7, Paragraph 1, point 6 of PfDA, stipulating that the fixing of a maximum age for recruitment, which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement, under the condition that this is objectively justified for the achievement of a legitimate aim and the means of achieving it do not go beyond the necessary. The compliance between means and objective is known in ECJ practice as proportionality principle.

3. In that sense, judgment of the provision in question (Art. 9 of ADTA) should cover four issues: whether there is different treatment and whether that different treatment is due to genuine and determining occupational requirement, objectively justified and whether the proportionality principle has been observed.

4. In the first place, law obviously stipulates different treatment. Persons aged 35 or 40, respectively, cannot apply for the title and position "assistant", "lecturer" and "scientific researcher". The different treatment on the ground of age is obvious.

5. Is the age requirement vital and essential from professional perspective? The answer should be "no". In the specific case, there is no relation between age and job done. Whether a person is 39 or 41 is irrelevant for the implementation of professional duties. On the contrary – easier access of older and more experienced tutors to assistant and teaching positions in universities would be of benefit for the students.

6. Is there a justified aim for the different treatment? Here the answer is positive, since legislator aimed to attract younger tutors in universities, allowing them to gain expertise and qualification.

7. Was the proportionality principle observed? In the light of said above, it should be mentioned that the provision's objective – to promote younger people to apply for assistant, lecturer and scientific researcher titles and positions – does not correspond to the principle of proportionality between means and objectives. The full restraint of persons' over the age of 40 access to those positions is too severe measure compared to the objective – to promote younger persons' participation in universities' lecturers' staff. Observance of proportionality principle requires that each derogation of individual right should combine the provisions of equal treatment principle with those of the aimed objective. Objective's fulfillment cannot have discriminatory result. Therefore, Art 9 of ADTA as part of domestic legislation cannot be justified by virtue of Article 6.1. Of the Council Directive 2000/78/EC. The objective can be achieved with other means, not with the exclusion of a vast group of persons from applying for assistant, lecturer and scientific researcher position. Actually, if a person is aged 40, the only way to apply for an academic position is to apply for the position „Associate Professor" or „Professor" that require however a dissertation and certain tutor's practice. In fact, persons with extensive professional expertise should also meet those two requirements in order to apply for University academic positions. That is not only discriminatory but also insensible, since a vast group of professionals are severely limited in their access to toting.

8. Therefore, the Commission for Protection against Discrimination considers that above cited provision of Art 9 of ADTA results in discrimination and contradicts to the Council Directive 2000/78/EC. That necessitates an amendment. Thus, and by virtue of Article 38, Paragraph 1, p.d of the Rules of Proceeding before CPD, the Commission in its full Nine-Member Panel decided:

RECOMMENDS by virtue of Article 47, point 8 of the Protection from Discrimination Act to the Council of Ministers as a subject with legislative initiative by virtue of Article 87, Paragraph 1 of the Constitution of the Republic of Bulgaria, to draft and pass to the National Assembly a draft amendment to Art 9 of the Academic Degrees and Titles Act. This Recommendation shall be sent to the Prime Minister.

This recommendation is only a declaration and cannot in any way oblige subjects of legislative competence and legislative initiative. It is an opinion of the national equality body of the Republic of Bulgaria, in implementation of its powers for elimination of all forms of discrimination.

5. Recommendation dated 09.01.2007 of Full Nine-Member Panel of the Commission for Protection against Discrimination [5]

Discrimination on the grounds of age
Art. 73, Paragraph 3 , Article 74, Paragraph 3 and Article 101, point 2 of the Social Security Code
Art. 4, Article 47, Para 8 and 10 of PfDA
Art. 7 of Rules for organization and activities of the CPD
Art. 38, Paragraph 1d of the Rules for Proceedings before CPD
Art. 4 of Decree No. 295 of CoM determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage
Art. 19 of the Rules for Implementation of the Social Assistance Act

By virtue of Article 4 of Decree No. 295 of the Council of Ministers determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage (Promulgated in SG, issue 112/2001) persons entitled to pension for social security history and age are treated in more favourable manner compared to persons entitled to disability pension, which is not objectively justified and does not pursue a legitimate aim. Persons with decreased employability from 50 to 70 per cent who are in the age group envisioned in Decree No. 295 and receiiving disability pension are not entitled to any of the guaranteed rights for persons with disabilities or persons entitled to pension for social security history and age for railway transport at reduced price and are deprived of the legal opportunity to acquire monthly allowance for transport services. By virtue of the Railway Transport Act, senior individuals constitute a separate social category, different from the group of persons with disabilities. It can be assumed that the right to railway transport at reduced price is linked to age and not to pension allowance.

Concerning: Elimination of discriminatory provision in Decree No. 295 of CoM determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage (Promulgated in SG, issue 112/2001).

Following the proceeding initiated on a complaint lodged at the Commission for Protection against Discrimination, it was established that in Article 4 of *Decree Decree No. 295 of CoM determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage* (Promulgated in SG, issue 112/2001) persons entitled to pension for social security history and age are treated in more favourable manner compared to persons entitled to disability pension, which is objectively unustified and does not have a legitimate aim.

The proceedings before the Commission for Protection against Discrimination is initiated on a complaint lodged by a person with permanently decreased employability by over 50 percent and entitled to disability pension, who was refused at the a railway office in the city of Burgas to buy a Senior Discount card for railway transport providing 50% discount for the passenger. After a close survey of the legislative framework, it was established that the refusal is justified, since *Decree No. 295 of CoM determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage* does not provide opportunity to men over the age of 62 and women over the age of 57 and receiving disability pension, to exercise the right to travel with 50%

[5] In force.

discount for railway travel. Only persons at the mentioned age and receiiving pension for social security history and age are entitled to that right.

It was also established that by virtue of Article 2 of *Decree No. 295* in conjunction to Article 19 of *Rules for Implementation of the Social Assistance Act* (Prom. SG, issue133/1998), persons with 71 percent or over 71 percent permanently decreased employability are entitled to travel free of charge – twice per year by railway and bus transport in the country – in both directions. However, that group excludes persons with permanently decreased employability between 50 and 70 percent.

In the course of proceedings it was established that the *Integration of Persons with Disabilities Act (Prom. SG, issue 81/2004)* entitles persons with permanent disabilities to monthly allowance for social integration according to their individual needs according to disability type, degree of decreased employability or decreased opportunity for social adaptation (Art.42, Paragraph.1). The allowance is differentiated, paid in cash and by virtue of Article 42, Paragraph 2, point 1 can be used to cover additional expenses for transport services. According to the provisions of Article 42a and Article 42b of the *Integration of People with Disabilities Act,* entitled to monthly allowance for additional transport service expenses are persons with reduced mobility, decreased employability over 50 percent and persons with 71 and over 71 percent decreased employability. Outside that scope are left persons who do not have mobility difficulties and have decreased employability from 50 to 71 percent.

Therefore, persons with decreased employability from 50 to 71 percent in the envisioned in *Decree No. 295* age and receiiving disability pension, cannot benefit from any of the guaranteed rights of persons with disabilities or persons entitled to pension for social security history and age to railway transport at reduced price, nor have legal opportunity to acquire monthly allowance for transport services.

Considering above stated, the Commission for Protection against Discrimination considers that present text of the provisions of Article 4, Decree No. 295 of CoM, constitute direct discrimination by virtue of Article 4, Para 2 of the Protection from Discrimination Act on the following considerations:

I. For railway transport, persons entitled to pension for social security history and age and those receiiving disability pension, are in comparable situation. That is confirmed by the provisions of Article 74, Paragraph 3 and Article 101, point 2 of the Social Security Code *(Prom. SG, issue 10/1999)*, prohibiting allowing to one person a disability pension due to general disease and personal pension for social security history and age. Also, by virtue of the explicit provision of Article 73, Paragraph 3 of the Social Security Code, persons at the age to acqure pension for social security history and age and entitled to disability pension, receive disability pension for age. Based on those provisions, one can conclude that legislator treats those persons in identical manner, due to the common ground unemployability – in the first case proven reason for disability pension or presumed reason for pension for social security history and age. Thus, equality and equal treatment rule is infringed by the provisions of Article 4 of *Decree No. 295 of CoM*, since to compare *similar circumstances* persons with decreased employability from 50 to 7o percent and receiiving disability pension, are treated less favourably on the ground of *proved decreased employability by over 50 percent* compared to persons receiving pension for social security history and age.

II. *Decree No. 295 of CoM* is adopted by virtue of Article 52 of the *Railway Transport Act (Prom. SG, issue 97/2000)*, envisioning the amount of compensation of reduced incomes from free and discount travels of students, elderly, mothers of many children, persons with disabilities, war veterans or other persons are determined with a Decree of the Council of

Ministers. The provision gives to CoM powers by virtue of explicit legal delegation to expand the range of persons entitled to reduced travel rates in favour of one or several social categories persons, but cannot limit the scope of persons. By virtue of *Railway Transport Act* senior citizens form a separate social category, different from that of persons with disabilities. Therefore, it can be assumed that the entitlement to railway transport at reduced price is linked to the provisional age and not the type of pension. In support of that assumption, assumption provisioned in *Decree No. 295* age (62 years for men and over 57 years for women), is lower than the age necessary for acquiring pension for social security history and age, i.e. 63 years for men and 60 years for women.

Based on above stated, Commission for Protection against Discrimination by virtue of Article 47, Para 8 of the Protection from Discrimination Act

RECOMMENDS

To the Council of Ministers of the Republic of Bulgaria to undertake the necessary legal steps to amending the provisions of Art.4 of *Decree No. 295 of CoM determining groups of passengers entitled to free and reduced price travel with railway transport and estimating the reduction percentage (Promulgated in SG, issue 112/2001*) and to adjust the legal normative act in compliance with the Protection from Discrimination Act.

Section II

Discrimination on the grounds of gender

6. Decision No. 29 of 04.07.2006 on case file 25/2006 of CPD Second Specialized Permanent Panel[6]

Discrimination on the ground of gender

Art. 243 of the Labour Code
Art.4, Para.2, Article 14 and Article 76, Para 1, point 2 of PfDA

The lady complainant H.M.M. has been subjected to gender-based inequal treatment by her employer in regard to her basic job remuneration which is major element oof the overall job remuneration.

Pursuant to the provision of equal pay for equal work, systematic inequal treatment of workers and employees belonging to a certain sex constitutes direct discrimination by virtue of Article 4, Para 2 of PfDA.

Employers are obliged to provide equal pay for equal work, equal basic job remuneration and additional allowances for unhealthy working conditions including. Basic salary is one of the elements of job remuneration; the element that reflects equal treatment of women and men who do equal work. Gender-based inequal treatment of workers and employees who do equal work in the same workplace and on the same position consitutes direct discrimination by virtue of Article 4, Para 2 of PfDA and infringes imperative provision of PfDA, Article 14, Paragraph 1 and Art.243 of the Labour Code.

The lady complainant requested establishing of direct discrimination by virtue of Article 4, Para 1 of PfDA, alleging that the employer has violated the principle of equal treatment, as he has not provided equal pay for equal work by virtue of Article 14, Paragraph 1 of PfDA. The actual circumstances described by the complainant in complaint registered under No. 91/27.01.2006 and in additional complaint No. 201/20.02.2006 are:

By 01.01.2000 she worked as an operator at mills B, C and D, and since the begining of 2000 is re-appointed as operator at mill A;

Under a verbal agreement with Production Unit Deputy Head, since 01.01.2002 the lady complainant started to work again as an operator at mills B, C and D;

After her application, she contracted a Supplementary Agreement No. 684/05.06.2002, in force since 01.06.2002, under which she was officially reappointed as operator of mills B, C and D.

The complainant had provided copies of two Additional agreements to her permanent labour contract, respectively under No. 684/05.06.2002 (1i) and under No. 259/30.03.2005 (1h), and two applications for adjustment of her basic salary to the basic salaries of the rest workers at same position. The first application dates of 21.04.2003 (1i), while the latterdates from 02.07.2004 (p. l).

The lady complainant H.M. alleges as possible infringer and defendant XXXXXX AD, town of P.

XXXXXX AD through a procedure representative litigated the complaint, stating that the labour relations with the lady complainant are arranged with permanent labour contract

[6] Surpreme Administrative Court of the Republic of Bulgaria – Fifth Unit with Decision No. 4180 of 25.04.2007 on administrative case No. 7369/2006 PROCLAIMS for insignificant the Decision IN THE PART considering H.M.M. complaint for the period from 27.01.2003 to 01.01.2004 and confirms it in the rest part. The Surpreme Administrative Court of the Republic of Bulgaria - Five-Member Panel - Second Chamber, With Decision No. 10594 of 01.11.2007 on administrative case No. 5581/2007 LEAVES IN FORCE the Commission's Decision IN THE PART establishing systematic inequal treatment of H.M.M. on the ground of gender.

and Additional agreements, presenting the mutual agreement between parties on all matters, basic remuneration including. Complainant's allegation concerning her salary is unjustified and her complaint should be left without consideration.

The Commission has found the complaint to be partially eligible considering the referral of administrative body in due time by virtue of Article 52, Paragraph 1 of PfDA and Article 9, point 1 of the Rules for Proceedings before the CPD, since three year period covers the span from 01.01.2002 until 27.01.2003 (the complaint has been lodged at the CPD on 27.01.2006), during which the lady complainant alleges she has been directly discriminated by her employer. There are no negative procedure provisions impeding initiation of the proceedings and consideration of the complaint in essence.

The rapporteur on the case file visited the defendant XXXXXX AD on 01.03.2006 and has read the employment dossier of the lady complainant and of the rest workers, working as operators of mills B, C; copies of the following documents have been provided to the Commission for Protection against Discrimination: employment dossier of H.M.M., permanent labour contracts and Additional agreements including; excerpts for job remuneration of each operator at mills B, C and D, H.M.M., K.P.C., N.Y.R., R.Y.R., A.A. and H.I.T. including; Collective labour contract and supplementary agreements to it dated 25.01.2002 and of 19.03.2003; Staff Rules, Section 9 "Salary Adjustments - individual and general overview of job remuneration".

In the period for familiarization with collected evidence by virtue of Article 59, Paragraph 2 of PfDA and Article 27, Paragraph 1, Paragraph 2 and Paragraph 3 of the Rules for Proceedings before CPD, the defendant has presented a copy of Supplementary Agreement to the Collective labour contract of 24.03.2006 and verification for gross salaries of all operators at mills B, C and D.

At the first hearing on 09.05.2006, the procedure representative of the defendant XXXXXXX AD (duely authorized) presented new written evidences: application by the lady complainant H.M.M. for targeted cash benefit for medical treatment at Military Hospital, a copy of aviso payment order for medical treatment, an official insurance of the complainant, advice for temporary disablement, comparative verification for job remuneration of operators at mills B, C and D in July 2002, 2003, 2004 and 2005, internship verification, education, the age and gross salaries of employees on the position "operator at mills B, C and D" as of 13.04.2006, verification for received remunerations by H.M. M. for the period January 2002 - March 2006, Supplementary Agreement to Collective Labour Agreement of 24.03.2006, Supplementary Agreement to the Collective Labour Agreement of 00.12.2005, Supplementary Agreement to Collective Labour Agreement of 13.04.2005, Supplementary Agreement to Collective Labour Agreement of 24.03.2005, Supplementary Agreement to Collective Labour Agreement of 08.03.2004, Report on attached Healthcare program in XXXXXX AD as part of the company social policy in 1998 - 2005 and translation of the Code of Ethics in I..

At the first hearing, parties were invited to reconcile. At the sitting held on 05.06.2006, the parties declared they did not reach an agreement, and proceeding in essence followed. The complainant through her legal representative (duely authorized, see Letter of Attorney to Application No. 588 as of 16.05.2006) presented new written evidences: a copy of Certificate No. 9499 for completed training in preprinting in 1994, a copy of Certificate No. 282 for completed course in radiation protection in 1995 and Order No. 1073 of 10.07.1985, showing that H.M.M. has completed the training course and has taken exams successfully, gaining the respective qualification.

At the sitting of 05.06.2006, the defendant, XXXXXX AD, presented new written evidences: comparative reference for start-up salaries for newly recruited at the position "operator at mills B, C and D", personal form of the complainant H.M.M., job description

signed by H.M.M. on 12.02.2005, written explanations for her grievance and short summary of employer's Human Resources policy.

The defendant requested for witness interrogation, that has been allowed. Dr. E.R.A.. in his capacity of Head of the Labour Medicine Service presented the Company healthcare policy, underlining explicitly that special care for female workers are provided, since they were risk group in cement industry. From 1998 to 2005. the healthcare allowance at the Company has been increased by two times and a half.

On defendant's request for longer time for investigation of documents on acquired qualification, Second Specialized Permanent Panel postponed the case file consideration for 20.06.2006. At the third hearing on 20.06.2006, Official note of 13.06.2006 for qualification of the complainant H.M. M. and Advice.No. 246/15.06.2006, showing when the cement mills B, C and D in XXXXXX AD have been installed and released in exploitation, have been allowed as evidence.

Based on the written evidences, verbal evidences of inquired witness and opinions of the parties, expressed at the two sittings in essence, the Commission has established the following from factual and legal pint of view:

The lady complainant H.M.M. worked as grinding machine-driver in the period 1979 - 1988 and in the period 1996 – 2000. Since 01.03.2000 the complainant was reappointed from position "grinding machine-driver" to the position "operator at mills C and D", as evident from Supplementary Agreement No. 492/17.05.2000 to permanent labour contract No. 108/01.08.1977. Since 01.06.2000 H.M.M. was reappointed from position "operator at mills C and D" to the position "operator at mill A", as evident from Supplementary Agreement No. 235/26.05.2000 to permanent labour contract No. 108/01.08.1977 Since 01.06.2002, the complainant, on her request, (page 43) has been reappointed from the position "operator at mill A" to position "operator at mills B, C and D", as evident from Supplementary Agreement No. 684/05.06.2002. Since 01.06.2002 until her retirement on 01.05.2006, the complainant has worked as an operator at mills B, C and D.

Job description, signed by the lady complainant on 12.02.2005, has been provided, where qualification and employment history necessary for the position are secondary education, vocational training and experience over 5 years. As additional qualification ITC literacy is pointed. In point 2 of the official note. No. 821 of 14.06.2006, the defendant indicates that the two positions, "grinding machine-driver" and "operator at mills B, C and D" are identical, but due to adjustment of technology process, renewal of mills and introduction of computer technologies, duties and obligations of workers have changed, setting new requirements concerning qualification of operators at mills B, C; from the presented certificate, it is evident that the lady complainant is proficient with Windows, Word, Page Maker and has good ITC literacy. if the employer considered that her additional skills do not meet the job description, he could refuse to reappoint the complainant to "operator at mills B, C and D" position. Furthermore, by virtue of Article 7 of the Collective labour contract, employer provides workers and employees with all provisions for training and re-qualification, according to the company HR policy and production, trading and/or other necessity. The employer has not suggested to the complainant to improve her qualification in the observed period.

Concerning complainant's vocational training, the Commission accepts that she had the necessary qualification, acquired through long employment history as grinding machine-driver, in the period 1996 - 2000 she worked at the installed renewed cement mills: mill D released in exploitation in 1996 , mill C released in exploitation in 1999 and mill B released in exploitation in 2000. The defendant does not prove complainant's lack of qualification and skills as a reason for lower basic salary.

From the collected written evidences, namely comparative verification for job remuneration of operators at mills B, C and D (see page 107) for July in 2003, 2004 and 2005, it is evident that the complainant H.M. got the lowest basic job remuneration, by BGN 45 lower than her male colleagues at the same position. It should be noted that the complainant had longest employment history in the Company, presuming acquired skills as machine-driver and as operator at cement mills. As the defendant admitted, positions are identical. Therefore, the Commission accepts that complainant and the rest operators at mills B, C and D have done equal work by virtue of Article 243 of the Labour Code and Article 14, Paragraph 1 of PfDA.

For equal work, employer is obliged to provide equal pay, namely equal basic job remuneration and extra payments for unhealthy working conditions as in cement industry. In fact, basic salary is key element of job remuneration, that shows equal treatment of women and men doing equal work. From the comparative analysis it is evident that employer has not breached the principle of equal treatment of women and men when determining additional remunerations for working conditions. Irrelevant is the proven fact that with every agreed rise of basic salary, employer increased complainant's basic salary. Inequal treatment of H.M.M. as direct discrimination is proved by the fact that after every rise, her basic salary always remained by BGN 45 lower than the salary of her male colleagues: K.P.C., N.Y.R., R.Y.R. and S.A.A. As evident from the comparative verification of 28.02.2006 H.I.T., appointed as operator at mills B, C and D on 01.11.2005, received basic job remuneration only by BGN 5 less than the lady complainant.

In accordance with the Staff Rules at I. Group, in force for XXXXXXX AD, XXXXX AD, XXXXXX AD, in Section 9 "Salary Adjustments - individual and general overview of job remuneration" (p.7-10) envisions individual assessment of workers' performance once per year - p. 6 of Section 9. "In the assessment, each employee shall be kept responsible for his or her performance and the company system of remuneration shall be directly linked to those aspects" (p.5). The defendant has not provided evidence that such estimation has been implemented for the complainant and that her lower basic job remuneration results from unsatisfactory performance.

By virtue of Article 9 of PfDA, when persons, considering themselves victims of discrimination, have established facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. The Commission agrees that the complainant H.M.M. has established facts for inequal treatment committed by the employer XXXXXX AD, since from 27.01.2003 until her retirement she received lower basic job remuneration for equal work compared to her male colleagues. Defendant's litigation that evident from presented verifications for other operators' remuneration, complainant's job remuneration before taking the position "operator at mills B, C and D" is higher than of the two men, does not prove lack of discrimination.

The inequal treatment is manifested at a later stage when higher personal contribution was recognized to all male workers for basic salary promotion, except to H.M.M. The lady complainant has lodged two applications (registered under No. 294/22.04.03 and No. 618/02.07.04) for adjustment of her basic salary to that of her male colleagues on the same position, i.e. she wanted her personal contribution to be assessed. The argument that the complainant got second largest salary in her group is deemed as inconsistent. Inconsistency results from the fact that gross salaries are compared, including remuneration for years of service. References show that the lady complainant had longest years of service and therefore highest additional job remuneration.

The defendant does not prove that he has has violated the right to equal treatment. It was not proven that difference in complainant's basic job remuneration compared to that of

her male colleagues results from estimation of personal performance and qualities, by virtue of the Internal Personnel Rules. The Supplementary Agreement to Collective labour contract of 00.00.00, signed on 24.03.2006 between the employer and Confederation of Labour "Podkrepa", CITUB and Promyana trade unions (see p.104), in point 4 of the Additional agreement, Parties agree to overcome differences between job remuneration of workers and/or the employees at similar workplaces, adjusting since 01.03.2006 remuneration of workers and/or employees receiiving lower remunerations. With that agreement the defendant has recognized that in the observed period she has committed inequal treatment of workers and employees in their job remuneration for equal work.

The Commission did not discuss witness evidences of Dr. I.R.A., Head of the Labour Medicine Service to the defendant, since they were relevant for the social policy and health status of workers. The lady complainant did not grieve for human resources policy in regard to equal treatment of women and men in the provision of healthy and safe working conditions.

From the collected evidence, Second Specialized Permanent Panel has established that complainant H.M.M. has been subjected to inequal treatment by her employer regarding her basic job remuneration, constituting a major part of salary. The systematic unequal treatment of the lady complainant regarding the provision of equal pay for equal work constitute direct discrimination by virtue of Article 4, Para 2 of PfDA. The complaint shall be considered partially for the period 27 January 2003 - May 2006 (retirement).

The complainant's request for compensation, as stated at the open hearing by her legal representative, shall be left without consideration, since the Commission cannot satisfy requests for compensation of suffered damages by virtue of the provisions of Article 65 of PfDA. Section II, Chapter Four of PfDA, any person whose rights under this Act or other laws regulating equal treatment are violated, may lay a claim to the District Court and request for damage compensations.

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA and Article 36 in conjunction to Article 37, Article 38 and Article 39 of The Rules for Proceedings before CPD Second Specialized Permanent Panel established as follows,

DECIDED

ESTABLISHES systematic inequal treatment of the complainant H.M.M., with Identity number:000000000 from S. E. - 0000, B municipality, V. District, 10 S. Str. employee of XXXXXX AD, which CONSITUTES INFRINGEMENT BY VIRTUE OF ARTICLE 14, Paragraph 1 of the Protection from Discrimination Act. The established infringement constitutes direct discrimination of the complainant by virtue of Article 4, Para 2 of PfDA on the ground of gender.

CONSIDERS PARTIALLY the complaint of H.M.M. for the period 27.01.2003 till her retirement in May 2006

DISREGARDS H.M.M. request for compensation for suffered damages, since such requests fall outside the Commission's powers, by virtue of Article 65 in conjunction to Article 71 of PfDA.

RECOMMENDS by virtue of Article 76, Para 1, point 2 in conjunction to Article 65, point 4 of the Protection against Discrimination Act to the defendant XXXXXX AD, the town of D. 0000, to terminate the gender-based inequal treatment of workers and/or employees who do equal work at similar workplaces and at similar position.

RECOMMENDS by virtue of Article 76, Para 1, point 2 in conjunction to Article 65, p. 4 of the Protection against Discrimination Act to the defendant XXXXXX AD in the town

of D., to include in the Collective labour contract explicit clauses guaranteeing observance of the equal pay for equal work principle by virtue of Article 14, Paragraph 1 and Paragraph 2 of PfDA without discrimination on any ground, gender including.

RECOMMENDS to the defendant XXXXXX AD by virtue of Article 76, Para 1, point 2 in conjunction to Article 65, point 4 of the Protection against Discrimination Act, job evaluation criteria determining job remuneration and job performance to be defined in Collective labour contract or Internal Rules for work wages and to apply them equally for all workers and/or employees heedless of the grounds by virtue of Article 4, Para 1 of PfDA.

Within one month from decision delivery, by virtue of Article 67, Paragraph 2 of PfDA the defendant XXXXXX AD shall notify Commission for Protection against Discrimination for measures taken in implementation of the mandatory instructions.

This Decision has been delivered to all parties in the case file.

The Decision is liable to appeal before the Supreme Administrative Court by virtue of Law on the Supreme Administrative Court within 14 days after its delivery to the parties.

7. Decision No. 53 dated 14.11.2006 on case file No. 41/2006 of the CPD Second Specialized Permanent Panel[7]

Discrimination on the ground of gender

Art. 4, Article 7, Paragraph 1, point 12 and Article 11, Paragraph 1 of PfDA
Art. 21 and Article 53, Paragraph 4 of the Law on Higher Education

The introduction of quota principle for enrollment in Bulgarian language and literature for male and female candidate-students can be assumed as "necessary measure" in the area of education and training, in order to provide balanced participation of women and men by virtue of Art.7, Paragraph 1, point 12 of PfDA and thus, it does not constitute discrimination. It is the only possible measure, that each university can undertake for provision of proportional participation of men and women in the academic education. The quota principle, that in its essence constitutes differentiated treatment based on objective criterion such as different biological development of the two sexes, ensures balanced participation of persons of both genders and implements the objectives of PfDA.

The proceedings is initiated by virtue of Article 50, point 3 of the Protection from Discrimination Act.

The signal was lodged by European Integration and Human Rights Association in the town of P., alleging that the permanent practice of the State University "St.K.O." for gender-based quota enrollment in Bulgarian language and literature classes constitutes discrimination. The Commission is called to ordain termination of that practice and to impose compulsory administrative measure to the defendant, obliging State University "St.K.O." to refrain from future infringements of the general discrimination prohibition. The signal alleges that the total number of enrolled students in 2004 was 100, of them 40 men and 60 women, as evident from data published in X magazine, issue 1 of 2005. That differentiation constitutes permanent practice of the University, resulting in considerable difference in minimum grades for male and female candidate - students in that specialty. It is also alleged that quotas result

[7] In force, see Decision No. 11457 of 20.11.2007 under administrative file No. 9433/2007 of the Surpreme Administrative Court, Five-Member Panel – Second Chamber.

in gender inequality when applying at university and that all male candidates are discredited, since they have to "compete" for less places compared to places for female candidate-students. According to the European Integration and Human Rights Association, women were also discredited by the introduction of quota principle. Due to the larger number of women applying for Bulgarian language and literature specialty, the minimum grades of enrolled women was considerably higher than that of enrolled men. In that way, quotas created discriminatory treatment for candidates that did not pursue "legitimate aim". Even if it was assumed that their introduction is "necessary measures" in the field of education by virtue of Article 7, Paragraph 1, point 12 of PfDA, the S. university was not competent to undertake those measures.

The defendant - State University "St.K.O." litigated that there was no discrimination and alleged that gender distribution for Bulgarian language and literature specialty creates balanced participation of men and women in training and has been introduced to avoid "feminization" of specialty and of the respective vocation.

In the proceedings, as interested party has been constituted the Ministry of Education that has provided its opinion, calling the CPD to leave the signal without consideration.

Based on collected evidence on the case file, the following has been established:

From the evidence produced by the State University "St.K.O.", it is evident that for 2006-2007 academic year, in specialty Bulgarian language and literature, 87 women with minimum grades 24.50 and 50 men with minimum grades 21.75 have been enrolled. The distribution of enrolled students for previous years has been in favour of women, with similar difference in grades between candidate – students men and women in favour of the latter. Thus, there is difference in enrollment of students on the ground of gender, which constitutes permanent practice of the State University of Sofia.

This proceeding argues whether the permanent practice of the State University of Sofia, expressed as introduction of gender-differentiation for the given specialty, does not lead to discrimination by virtue of Article 4 of the Protection from Discrimination Act.

In this factual context, the Specialized Permanent Sitting Panel reckons that the allegation for discrimination is unjustified.

The Specialized Permanent Sitting Panel considers that introduction of quota principle for enrollment in Bulgarian language and literature between candidate - students of female and male gender can be assumed as a necessary measure in the area of **education and training for provision of balanced participation of women and men** by virtue of Article 7, Paragraph 1, point 12 and for that reason does not constitute discrimination. Furthermore, The Specialized Permanent Sitting Panel has established that under the current system for enrollment of students in university that is the only possible measure, that an autonomous university can undertake with the aim to provide proportional participation of men and women in academic education. The division by quota principle, that in its essence constitutes differentiated treatment based on objective criterion such as different biological development of the two sexes, guarantees balanced participation of persons of different gender and furthers the implementation of PfDA objectives.

The European Integration and Human Rights Association litigated the power of State University "St.K.O." to determine the necessary measures, since by virtue of PfDA Article 11, Paragraph 1, only governmental bodies had such competence. The Specialized Permanent Sitting Panel considers that S. university cannot be defined as a statutory body but it constitutes "public body" that by law has the necessary competence to undertake "necessary measures". On the ground of its academic autonomy, promulgated in the Constitution of the Republic of Bulgaria, Article 53, Paragraph 4 and Article 21 of the Law on Higher Education,

State University "St.K.O." is the empowered and proper body to issue certain acts, in particular the decision of the Academic Council to introduce measures, guaranteeing balanced participation of men and women in education.

Actuated by the above stated, the Second Specialized Permanent Panel of the Commission for Protection against Discrimination

DECIDED:

ESTABLISHES that the practice of State University "St.K.O." to enroll students in Bulgarian language and literature specialty through quota principle on the ground of gender does not constitute discrimination by virtue of Article 4, Para 1 of Protection from Discrimination Act.

DISREGARDS the signal sent by European Integration and Human Rights Association town of P.

The decision is liable to appeal before the Supreme Administrative Court by virtue of the Supreme Administrative Court Act within 14 days after its delivery to the parties for ordainance.

8. Decision No. 30 dated 24.04.2007 on case file No. 92/2006 of the CPD Second Specialized Permanent Panel[8]

Discrimination on the ground of gender when exercising the right to work

Art. 6, Paragraph 2 and Article 48, Para 1 of the Constitution of the Republic of Bulgaria
Art. 4, Para 1, Article 12, Paragraph 2 and Paragraph 3, Art.Art. 13-19, Article 21, Article 76, Para 1, point 1 and Article 80, Paragraph 2 of PfDA
Art. 8, Paragraph 3, Article 320 and Article 333, Para.1 of the Labour Code
Regulation No. 5 for employees suffering from certain diseases, listed in a Regulation of the Minister of Health, have special protection by virtue of Article 333, Paragraph 1 of the Labour Code (promulgated in SG, issue 33 of 1987)

The provisions of Article 12, Paragraph 2 of PfDA forbid employers to request information on grounds by virtue of Article 4, Para 1 of PfDA before contracting of permanent labour contract, unless that is necessary for the survey and permission for access to classified information or under the provisions of Article 7 of PfDA. The procedure on collecting such information, described in Regulation No. 5 on diseases under special protection by virtue of Article 333, Paragraph 1 of the Labour Code constitute special legal protection. PfDA provides complete and comprehensive protection against discrimination when exercising the right to work before the occurence of labour contract (Art. 12 of PfDA), during its existence (Art. 13-19 of PfDA) and in occasions of its termination(Art. 21 of PfDA). At the moment of contracting permanent labour contract by virtue of Article 70, Paragraph 1 of the Labour Code, the

[8] In force, see Decision No. 2238 dated 26.02.2008 under administrative file No. 12666/2007 of the Supreme Administrative Court , Five-Member Panel - Second Chamber.

lady complainant was given a declaration to sign. Declaration contained circumstances that employee was supposed to declare and that provided information for his or her health status, personal and social status (membership in trade unions, being a municipal councilor, etc.), also pregnancy. Those are grounds envisioned in Article 4, Para 1 of PfDA and Article 8, Paragraph 3 of the Labour Code, by their virtue direct and indirect discrimination is prohibited. The request employees to fill declaration revealing information for the grounds of Article 4, Paragraph 1 of PfDA constitutes discrimination.

The proceedings is initiated by virtue of Article 50, point 1 of the Protection from Discrimination Act (PfDA).

The complaint is lodged by N.D., from the town of St.Z. against XXXX EAD, represented by V.M.S.- Chief Executive Director of XXXX EAD, for discrimination to exercising the right of labour.

The request to the Commission for Protection against Discrimination is: to establish infringements of PfDA mentioned in the complaint and their perpetrator; to establish the complainant as wronged person; to terminate the implementation of Order No. 0000-000/00.00.2006 of XXXX EAD Chief Executive Director for termination of complainant's labour contract; to give mandatory instruction to the employer and respective officials for abrogation of that Order, and to prevent similar infringements to other persons working at XXXX EAD, and to impose sanctions on responsible officials.

The lady complainant alleges that when starting work at XXXX EAD, - financial center of St.Z., on xxx 2006, the employer asked her to sign a declaration consisting of many discriminating texts, a statement that at the moment she is not pregnant. The lady complainant alleged that she got pregnant in xxx 2006 and by the end of month xxx 2006 she had to undergo a series of medical check-ups related to her pregnancy. Therefore, the complainant presented her absence form to the employer within the provisional term of 3 days and the established dignosis "pregnancy". Informed about her state, the employer immediately terminated her labour relation with Order No. 0000-000/00.00.2006. The alleged violation is that when giving her the Order for dismissal, she was told that she is dismissed because of her pregnancy in spite of the signed declaration that she is not pregnant. The complaint was accompanied with a copy of declaration that XXXX EAD employees sign when starting work, complainant's permanent labour contract and the Order for its termination.

The defendant V.M.S., in capacity of XXXX EAD Executive Director, denies complainant' allegations. In explanations provided to the CPD and registered under No. 253/09.05.06 the defendant states that N.D.D. has been appointed as Bank Transactions Expert in the financial center – St.Z. of XXXX EAD with an agreement contracted by virtue of Article 70, Paragraph 1 of the Labour Code, with six-months testing period in favour of the employer. The complainant was presented to sign a set of declarations, prepared in compliance with the normative framework, among them the declaration in question, compiled by virtue of Article 333 of the Labour Code, ascertaining presence or lack of protection to dismissal.

Defendant alleges that the complaint is unjustified, since contracting of permanent labour contracts between XXXX EAD and newly recruited employees, by virtue of Article 70, Paragraph 1 of the Labour Code, is a mass practice and is practiced independently of gender and age. Also, the set of declarations has been presented to the complainant after contracting permanent labour contract and their contents did not influence N.D. hiring and recruiting.

It was also alleged that XXXX EAD, in its capacity of employer, does not treat less favourably females and future mothers, since to 00.00.2006, 80 per cent of the bank staff have been women, in the central management and branch network in the country work 137 female employees who are in maternity leave. In his explanations, defendant said that the complainant was dismissed by virtue of Article 71, Paragraph 1 of the Labour Code and not because she was pregnant, stating that employer's decision complied to all legal requirements.

According to the defendant, the "pregnancy" ground was not mentioned in the explicitly listed grounds by virtue of Article 4, Para 1 of PfDA and did not constitute reason for committing direct and indirect discrimination by the employer.

After considering presented evidence separately and in totality and parties' opinions, the Sitting Panel established as follows:

Evident from the enclosed permanent labour contract No. 0000-00, contracted on 00.00.2006 between the lady complainant and XXXX EAD, represented by V.M.S., Chief Executive Director, the complainant N.D.D. started as Bank Transactions Expert at XXXX EAD, Financial Center St.Z., St.Z. District. The contract was contracted by virtue of Article 70, Paragraph 1 of the Labour Code, with six-month testing period in favour of the employer. The agreement is accompanied by a declaration, signed by lady complainant on 00.00.2006; under point 6 the statement "I am not pregnant" is found. The declaration also contains other texts, aimed to verify presence or lack of many other circumstances, namely: vocational rehabilitation, ischemic heart disease, active tuberculosis, oncologic disease, occupational disease, mental disease, diabetis, membership in trade union board of territorial, sectoral or national elected syndicate body, and being a municipal councilor. At presence of one of those circumstances, the declaration contains texts obliging the respective employe to present within three days verification to the employer.

Complainant's labour contract was terminated with Order No. 0000-000 of the employer of 00.00.2006 by virtue of Article 71, Paragraph 1 of the Labour Code on employer's initiative, before the testing period expiry. A copy of complainant's patient's file is enclosed to the complaint, verifying her pregnancy and respectively temporary disablement at the date of 00.00.2006. The labour contract termination dates several days after she gave the employer her medical advice for temporary disablement From the medical advice one cannot ascertain that the document refers to N.D.D., since there is no other personal data. The document is not filed under XXXX EAD register and it is not evident when and if it was delivered to the employer. Pregnancy is an objective state and its presence in the lady complainant is not litigated. However, there is no evidence for cause and effect relation between the objective fact "pregnancy" and the fact "termination of complainant's labour contract". Considering all said above, The Specialized Permanent Sitting Panel considers unproven N.D. allegations that after she informed employer for her pregnancy, he dismissed her.

Object of this litigation is not the legitimacy of dismissal but the reasons leading to labour contract termination and if those reasons contain element of inequal treatment. Considering presented circumstances, The Specialized Permanent Sitting Panel accepts that the requirement of Article 9 of PfDA, namely that the party alleging to be a victim of discrimination has to prove facts proving the presence of discrimination, has not been fulfilled. The Specialized Permanent Sitting Panel finds complainant's allegation that the termination of her labour relation from XXXX AD constitutes discriminatory act to be inconsistent.

Regarding the allegation that the declaration that had to be filled at recruitment and contained discriminating texts, The Specialized Permanent Sitting Panel has established the following:

The lady complainant filled declaration on the day of recruitment, 00.00.2006, which is not litigated by parties. It contains texts informing employer for employee's health status (vocational rehabilitation, ischemic heart disease, active tuberculosis, oncologic disease, occupational disease, mental disease, diabetis) and for his or her personal and social status (membership in trade union board at territorial, sectoral or national trade union, being a municipal councilor) – grounds covered under Article 4, Para 1 of PfDA and Article 8, Paragraph 3 of the Labour Code that prohibit any direct and indirect discrimination.

The provisions of Article 12, Paragraph 2 of PfDA prohibits employers to request information for the grounds by virtue of Article 4, Para 1 of PfDA before contracting a permanent labour contract, unless that is necessary for permission to work with classified information or by virtue of Article 7 of the Law. The preliminary collection of information for employees under special protection by virtue of Article 333 of the Labour Code is not covered by the exceptions listed in Article 12, Paragraph 2 of PfDA. The collection of such information is envisioned in Regulation No. 5 for diseases under special protection by virtue of Article 333, Paragraph 1 of the Labour Code (Prom. SG, issue 33/1987) and allows employer to request information from workers/employees only after they have been nominated for dismissal (Art. 1, Paragraph 2 of Regulation No. 5). Besides, employees on permanent labour contract by virtue of Article 70 of the Labour Code in test period in favour of employer, are not entitled to special protection by virtue of Article 333 of the Labour Code, that on one hand stultifies filling of such declaration and on the other hand urged employees to declare circumstances related to their health status, personal and social status.

PfDA objective is to give complete and comprehensive protection from discrimination when exercising the right to work - before occurence of the labour contract (Art. 12 of PfDA) and during its existence (Art. 13- 19 of PfDA), and at its termination (Art. 21 of PfDA). Therefore, the Specialized Permanent Sitting Panel considers that XXXX EAD practice to request declarations revealing information for the grounds by virtue of Article 4 of PfDA, constitute infringement of Article 12, Paragraph 2. The legal interpretation of those provision allowed the Panel to conclude that collection of information for the grounds of PfDA Article 4, immediately before signing permanent labour contract, constitutes infringement of Article 12, Paragraph 2, furthermore that since then employee begins to execute his or her duties and obligations and exercise his or her rights under the labour contract. The contrary view would encourage employers to violation and would result in affected persons's inability to get "effective protection against discrimination".

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA, Second Specialized Sitting Panel of the Commission for Protection against Discrimination

D E C I D E D

REJECTS AS UNJUSTIFIED the complaint of N.D.D., from the town of St. Z. in the part concerning discrimination on the ground of PREGNANCY, due to lack of discrimination by virtue of Article 4, Para 2 and Paragraph 3 of the Protection from Discrimination Act committed by the defendant XXXX AD.

ESTABLISHES that defendant's practice - XXXX AD, in its capacity of employer, to urge employees to fill declaration revealing personal information on grounds by virtue of Article 4, Para 1 of the Protection from Discrimination Act, at the moment of recruitment, constitutes infringement of Article 12, Paragraph 2 of PfDA.

IMPOSES THE ADMINISTRATIVE SANCTION "PROPERTY SANCTION" amounting to BGN 1000 by virtue of Article 80, Paragraph 2 of the Protection from Discrimination Act.

RECOMMENDS to XXXX EAD by virtue of Article 76, Para 1, point 1 of the Protection from Discrimination Act to terminate the practice of collecting information from employees for the grounds listed in Article 4, Para 1 of PfDA at the moment of recruitment, and to refrain in future from similar infringements.

Within one month after decision delivery, by virtue of Article 67, Paragraph 2 of the Protection from Discrimination Act the defendant on the case file - XXXX AD - shall notify Commission for Protection against Discrimination on the measures taken in implementation of the mandatory instructions.

Section III

Discrimination on the ground of sexual orientation

9. Decision No. 42 dated 13.10.2006 on case file No. 13/2006 of CPD Fifth Specialized Permanent Panel [9]

Discrimination on the ground of sexual orientation
Art. 4, Para 2, Article 5, Article 9 of PfDA

Behaviour, expressed verbally through offensive words related to wronged person's sexual orientation and ethnic origin, constitutes direct discrimination, since it aimed or resulted in offending person's dignity and creating hostile, offensive or impending environment.

The proceedings is initiated on complaint by I.S.A. Complainant grieves of open homophobic attitude that constitutes direct discrimination by virtue of Article 4 (2) of the Protection from Discrimination Act on the ground of sexual orientation, ethnic origin and citizenship.

On 24 October, around 4.30 A.M. the complainant was stopped close to XXXX nightclub, visited by persons with bisexual and homosexual orientation. Two patrol police officers checked his identity, nationality and citizenship. The complainant declared his sexual orientation. He alleged that one of patrolling police officers expressed verbally abusive attitude to his Albanian origin and sexual orientation. The complainant asked about policeman's name, rank and number in order to complain from his actions.

The complainant was taken to XX Regional Police Office, where he allegedly has been hit, abused and refused a phone call to his mother and appointment to his psychiatrist. He was under detention for 12 hours without meal. He was summoned to report to investigator V.G. on 15.11.2005 in XX Regional Police Office for verification.

In their explanations, the three patrolling police officers litigate that the complainant I.S.A. asked them to check his documents and behaved provokingly. That was the reason for his arrest. In the course of investigation, policemen added that during his personal search at the Regional Police Office, the complainant disposed of paralytic spray and patron that were another reason for his arrest.

In the attached explanation, the investigator V.G. established that complainant refused to provide his ID documents for verification, he hasn't pu up resistance to his arrest and there were no witnesses able to specify the factual context. He also suggested the case file to be sent to the Prosecution Office.

Based on collected evidence on the case file, following conclusion can be formulated.

The information that the complainant was beaten and insulted at 0x Regional Police Office remains unconfirmed.

The following contradictions in the written evidences, collected by rapporteur, have been found.

Policemen allege that they have legitimated themselves to complainant. If so, he would not have insisted to learn their identification numbers. Obviously, their number, strength and the fact that complainant has resisted to his arrest, make policemen's explanations rather unconvincing. In the Records of the Regional Police Office, spray or patrons are not mentioned. Not a single evidence justifying complainant's detention at the Regional Police Office and his arrest can be found, nor his consecutive report. As stated in the investigator's verification: "The lack of civilians excludes any probability the person to commit crime by virtue of Article 325 Paragraph 1 of the Penal Code." The Prosecution

[9] Decision has entered into force.

Office and the Deputy District Attorney Ch. categorically refuse to reveal information concerning materials from the case file, thus The Specialized Permanent Sitting Panel assumes for unconfirmed information for dangerous materials fround in the complainant.

After interrogation of the policemen D.E.S., V.S.L.. and A.Y.P. from 0x Regional Police Office and the open hearing on on May 16, 2006, it was established that the abovementioned actions have not been not performed by A.Y.P. and V.S.L..

The Specialized Permanent Sitting Panel asumes that there are enough proven facts supporting the conclusion that there is discrimination and by virtue of Art.9 of the Protection from Discrimination Act the defendant should prove that the right to equal treatment is not infringed. Such evidence have not been produced byD.E.S. in the course of investigation and open hearing.

Considering the above stated, the Commission for Protection against Discrimination in its Fifth Specialized Permanent Panel,

D E C I D E D

With his deeds D.E.S. has committed infringement by virtue of Article 5 of the Protection from Discrimination Act. He has committed unwanted by the complainant behaviour expressed verbally, with the aim or result to offend his dignity and creating hostile, offensive or impending environment.

IMPOSES to D.E.S. a fine amounting to BGN 250 (two hundred and fifty levs).

This decision is liable to appeal within 14 days before the Supreme Administrative Court by virtue of the Supreme Administrative Court Act.

10. Decision No. 46 of 17.10.2006 on case file No. 17/2006 of CPD Fifth Specialized Permanent Panel [10]

Discrimination on the ground of sexual orientation
Art. 43 of the Constitution of the Republic of Bulgaria
Art. 4, Para 3 of PfDA
Art. 9 of PfDA

Refusal of the Mayor of V. Municipality to permit an event (opening of info-spot in the city center) of X association – publicly known as defender of social minorities' rights, accompanied with wide publicity of the request made, two letters on the same occasion, to the same addressee, which is uncommon practice and has created unfavourable environment by virtue of § 1 of the Protection from Discrimination Act Supplementary Provisions, justifying the conclusion for infringement of Article 4, Para 3 of Protection from Discrimination Act.

[10] The Surpreme Administrative Court of the Republic of Bulgaria - Five-Member Panel - Second Chamber With Decision No. 11295 of 16.11.2007 under administrative file No. 6407/2007 abrogates decision No. 4752/15.05.2007 under administrative file No. 11478/2006 of the Three-Member Panel of the Surpreme Administrative Court and decision No. 46/17.10.2006 of the Commission for Protection against Discrimination and returns the case file to the Commission for Protection against Discrimination for new ruling.

The proceedings is initiated by virtue of Article 50, point 1 of the Protection from Discrimination Act.

The complainant, X Association, grieves for discriminatory treatment by the municipality of V., expressed as unjustified refusal to allow implementation of their event. The Commission is called to establish indirect discrimination in seemingly neutral Order, issued by the Mayor of V. municipality and that the public scandal induced by the municipality of V. and media coverage have created hostile environment and hostile attitude to one social group from the population of the Republic of Bulgaria.

On July 7, 2005 X Association sent a written request to the municipality of V., asking for permission to open an information kiosk at the city center pedestrian zone, for the period 24-27 August 2005. The information kiosk is a pavilion with 3 x 3 meters size. In a previous phone call, municipal administration of V. city confirmed hat the official request has been received and was eligible. On 23rd August, X association received written reply from the Municipality stating that their request cannot be satisfied since the application was incomplete and the "legal representative of the organizers was not visible; that, however, is essential condition for the responsibility taken for the planned event". The event could not be defined as "culture event" and its implementation on a territory "visited freely by enormous number of people on the territory of V. municipality, cannot be approved by the V. Municipality". The reply explains that installing a pavilion in the period 24 - 27 August 2005 will hamper the free movement in city center. By virtue of Article 12 point 4 and Article 5 of the Events, Meetings and Manifestations Act, permission for placing an information point on N. square in the city of V. is refused. On that and the next days, mass media published information for that refusal. From 17 - 31 August 2005, the Mayor's functions have been exercised by M.T. (Deputy Mayor); media, however, quoted statements of K.Y., Mayor of the V. municipality, who was in annual leave.

Based on collected evidence on the case file, the following has been established:

On 7 July 2005, X Association sent a notification, by virtue of the Events, Meetings and Manifestations Act, to the Mayor of the municipality of V. for opening of info-kiosk in the period 24 - 27 August 2005. In reply, on 23.08.2005, two days before the event, the Mayor of the municipality of V. sent two letters to H.M., representative of X Association, that are attached to the case file. The first letter, filed under No. RD 5-9100/499 of 23.08.2005, states that all requests for implementation of organized events have been answered in due time and the Municipality is not liable for their consequences. The second letter, No. RD-5-94 x (35) of 23.08.2005 refuses opening of info-kiosk by virtue of Art.12, point 4 and Article 5 of Events, Meetings and Manifestations Act.

In that factual context, The Specialized Permanent Sitting Panel considers that there are facts implying of discrimination committed by the municipality of V. against the complainant. In that case, by virtue of Article 9 of the Protection from Discrimination Act, the burden of proof falls on the defendant.

The municipality of V. presented written opinion that rejects the complaint of X Association as unjustified. The Opinion does not comment the complaint's basic facts evidencing of discrimination. It does not explain why the refusal was formulated a day before the planned event. The request for opening of info-kiosk is somehow linked to other activities such as a parade, open concert and other mass events, that have not been subject of the request. The complainant asks to open an information kiosk – a small-sized place that cannot be interpreted as a request to construct a stage or another large-scale event. For that reason, The Specialized Permanent Sitting Panel does not accept that the information kiosk could impede free movement of citizens and guests. The provisions of Article 12, Paragraph 2 of the Events, Meetings and Manifestations Act lists explicitly the occasions when the Constitutionally guaranteed right to peaceful and unarmed assembly for meetings and

demonstrations (Art. 43 of Constitution) is limited. Basic reason for application of Article 12, Paragraph 2, point 4 is the presence of "undoubted information" that other individuals' rights and freedoms will be breached. The prohibition is imposed with motivated written act within 24 hours of the notice (Art. 12, Paragraph 3 of the Events, Meetings and Manifestations Act) and is liable to appeal before the Regional Court, which shall pronounce its ruling within five days. In this case, by issuing a Prohibiting Order one month after the notice of 7 July 2005 and one day before the info-pavilion opening, the Mayor has made impossible the appeal against his order and has deprived the complainant of his lawful right to protection.

During the proceeding, it remained unclear why V. Municipality replied in the day before planned opening of the info-kiosk. Defendant's litigations that the refusal results from lacking legal entity documents. The municipality of V. had enough time to request those documents from the complainant. However, none of the letters sent to X Association, displays such a request. The Specialized Permanent Sitting Panel has also established that the refusal, accompanied with wide publicity of the request, the two letters with the same reason and the same receiver, is uncommon practice that can be reasonably explained with media coverage, creating unfavourable environment for the complainant.

Thus, considering all circumstances, the Specialized Sitting Panel of the Commission for Protection against Discrimination established that there are enough facts supporting the conclusion for infringed right to equal treatment and discrimination committed by virtue of PfDA

The Commission for Protection against Discrimination in its Fifth Specialized Permanent Panel,

DECIDED

With its actions, the Municipality of V., represented by its Mayor, has committed discrimination by virtue of Article 4, Paragraph 3 of the Protection from Discrimination Act. It has committed an apparently neutral provision, which combined with the manner of issuing and dissemination of the Order refusing implementation of event organized by X Association, objectively has led to less favourable treatment by virtue of § 1 of Supplementary Provisions of the Protection from Discrimination Act.

IMPOSES to the Municipality of V. property sanction amounting to BGN 500 (five hundred levs).

This decision is liable to appeal within 14 days before the Supreme Administrative Court by virtue of the Supreme Administrative Court Act.

11. Decision No. 50 of 24.03.2008 on case file No. 17/2006 of CPD Fifth Specialized Permanent Panel[11]

Discriminationon the ground of sexual orientation
Art. 32, Paragraph 1, Article 39, Paragraph 1 of the Constitution of the Republic of Bulgaria
Art. 8 of the European Convention on Human Rights
Art. 4, Para 3 of PfDA
Art. 9 of PfDA

Through seemingly neutral provision – namely an Order refusing implementation of event of X. Association - the Mayor of V. Municipality, in his capacity of legal representative of the municipality of V. has put X association in less favourable situation compared to other legal entities, whose major activity is different from protection of persons' with different sexual orientation rights. That, combined with the manner of issuing and dissemination of an Order for refusal, has objectively led to indirect discrimination.

Art. 4, Para 1 of PfDA explicitly indicates sexual orientation as one of the grounds protected against inequal treatment. Bulgarian legislator has assessed that sexual orientation is a personal trait so deeply connected with one's intimate world that any discrimination on that ground is inadmissible. Protection of the right of sexual orientation is rooted in the protection of private life. Article 32, Paragraph 1 of the Bulgarian Constitution stipulates that private life of citizens is inviolable and that everyone is entitled to protection against unlawful intervention in private and family life and against violation against their honour, dignity and reputation. Such protection of the right to private life is provided by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The committed infringement is cumulative failure to assist X Association in clarifying the type of event, belated delivery of the refusal that resulted in limiting complainant's right to protection, since it made pointless the appeal of that Order and the refusal itself which although seemingly neutral (since it did not indicate explicitly sexual orientation as its motive), has resulted in discrimination.

The proceedings is initiated by virtue of Article 50, point 1 in conjunction to Article 4 of the Protection from Discrimination Act (PfDA), by Order of the Commission's Chairman No. 00/00.00.0000 and the case file was assigned to Fifth Permanent Panel, specialized on the ground of sexual orientation.

The proceedings is initiated on complaint registered under No. 00/20.01.2006 of X association, represented by its Executive Director A.G., evident from its Actual Status Certificate, published on associatopn's website, with address - city of S., V.L. Blvd., against the Municipality of V., represented by the Mayor K.Y., resident of the city of V.

X Association participates in the proceedings before CPD through procedure representative, lawyer P.P. The municipality of V. participates in the proceedings through its procedure representative and legal adviser B.D.

[11] Decision is enacted at new ruling by virtue of decision No. 11295 of 16.11.2007 under administrative file No. 6407/2007 of the Supreme Administrative Code.
The Decision is appealed before the Supreme Administrative Code and legal proceeding is pending at the time of Compendium publishing.

The Complainant, X Association, grieves for discriminatory treatment committed by the municipality of V., expressed as unjustified refusal of event implementation. The CPD is called to establish indirect discrimination in seemingly neutral Order, issued by the Mayor of the municipality of V. It is also alleged that the municipality of V. has steered a public scandal and media coverage has created hostile environment and hostility to one social group of the population of the Republic of Bulgaria.

On July 7, 2005 X Association sent a written request to the municipality of V. for permission to open information kiosk in city center, in the pedestrian zone, for the period 24 - 27 August 2005. The Info-kiosk is a pavilion with size 3 X 3 meters. Allegations: in several telephone conversations, the municipal administration of the city of V. has confirmed that the request was received and contains the necessary information. On August 23, the municipality of V. sent letter to X Association, stating that the request cannot be satisfied, since the application failed to produce all necessary proofs, in particular "legal representative of the organizers was not visible; that, however, is essential condition for the responsibility taken for the planned event". The event could not be defined as "culture event" and its implementation on a territory "visited freely by enormous number of people on the territory of V. municipality, cannot be approved by the V. Municipality". The reply explains that installing a pavilion in the period 24 - 27 August 2005 will hamper the free movement in city center. By virtue of Article 12 point 4 and Article 5 of the Events, Meetings and Manifestations Act, permission for placing an information point on N. square in the city of V. is refused. From 17 - 31 August 2005, the Mayor's functions have been exercised by M.T. (Deputy Mayor); media, however, quoted statements of K.Y., Mayor of the V. municipality, who was in annual leave.

On 17.10.2006, CPD Fifth Permanent Panel pronounced Decision No. 46, establishing indirect discrimination by virtue of Article 4, Para 3 of PfDA, committed by the municipality of V., represented by its Mayor K.Y. against X X Association and has imposed property sanction amounting to BGN 500 to the municipality of V. The municipality of V. appealed Decision No. 46/17.10.2006 before the Supreme Administrative Court. Decision No. 7452/15.05.2007 of the Three-Member Panel of SAC confirmed CPD decision.with Ruling No. 11295/16.11.2007. The Five Member Panel of the Supreme Administrative Court repeals the Three Member Panel's decision and CPD's decision and returns the case file to the Commission that shall consider the given instructions.

By Order No. 2/04.01.2008, the proceedings on case file No. 17/06 has been resumed and procedure steps continuing the decision ordainance have been steered.

Considering the instructions of the Supreme Administrative Court Five-Member Panel, the Commission Panel ordained Decision No. 11295/16.11.2007 and judging separately and in totality the presented evidence and considering the parties' opinions, has established the following:

I. Sexual orientation as a relevant ground for discrimination.

X Association has been established as a non-profit organisation with the key objectives - social integration of lesbians, gays, bisexuals and trans-sexuals in the Republic of Bulgaria, equal rights, independently of sexual orientation and gender identity, elimination of all forms of discrimination and persecution against indicated social group. X Association is registered in the non-profit legal entities register to Sofia City Court, as evident from certificate for actual state, published on the organization website.

Art. 4, Para 1 of PfDA explicitly indicates sexual orientation as one of the grounds protected against inequal treatment. Bulgarian legislator has reckoned that sexual orientation is a personal trait so deeply connected with one's intimate world that any discrimination on that ground is inadmissible. Protection of the right of sexual orientation is rooted in the protection of private life. Article 32, Paragraph 1 of the Bulgarian Constitution stipulates that private life of citizens is inviolable and that everyone is entitled to protection against unlawful intervention in private and family life and against violation against their honour, dignity and reputation. Such protection of the right to private life is provided by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The European Court of Human Rights case-law shows that the right to private life can be limited only in cases of absolute necessity and urgent need (see Case Class v. Germany). Court judgment on the case Dudgeon v. United Kingdom states that the right to private life includes the right of adults to have intimate consensual homosexual acts (see also Norris v. North Ireland and Modinos v. Cyprus, etc.).

As of public image of the complaining organization, it is associated with freedom of expression, as laid in Bulgarian Constitution – Article 39, Paragraph 1. In this case, the litigations of V. Mayor referring to breach of others' rights are, least to say, inconsistent. An info-kiosk sized 3 x 3 meters featuring reading materials on human rights and antidiscrimination could not breach the rights of citizens. The fear of "type of info materials … and the eligibility of their kind and contents" is ungrounded; and the failure to obtain more information for the contents of those materials is not sufficient to justify the restraint for freedom of expression.

II. Scope of protection – Article 2 and 3 of PfDA

By virtue of Article 2 of PfDA, the purpose of this Act shall be to ensure for all individuals the right to equality and protection against discrimination. Article 3 defines Act's scope, involving physical persons and legal entities when they are discriminated on any of the grounds in Article 4, Para 1, in regard with their membership. In this case, refusal of permission for temporary opening of information kiosk has led to inequal treatment of that organization whose members are persons with homosexual orientation or people who believe in the free right to sexual orientation. As mentioned above, sexual orientation is one of the grounds protected against inequal treatment. Therefore, the Commission is obliged to survey all circumstances on the case file and judge whether the refusal of V. Mayor was explicitly or silently motivated from the Association's mission.

III. Essence of the committed infringement

1. The Specialized Permanent Sitting Panel considers that committed infringement consists of cumulative failure to cooperate in clarifying the type of event, belated delivery of refusal that restrained the complainant's right to protection, since made pointless Order's appeal, and the refusal which although seemingly neutral (not explicitly indicating sexual orientation as motive for the refusal) has resulted in discrimination.

2. Allegation: on 7 July 2005 H.M., in his capacity of Project Coordinator of X Association sent application for permission, according to the Events, Meetings and Manifestations Act, to the Mayor of V. municipality for opening of information Kiosk on "Nezavisimost" Square in the city of V. for the period 24 - 27 August 2005. The application indicates address, telephone, fax number, e-mail and website of X Association. The letter explains that the event is part of a project ***financed*** (obviously not organized) from the Dutch Embassy, aimed to raise adequate attitude to sexual minorities in Bulgaria. It is also

explained that volunteers "will disseminate free information materials ***on human rights, antidiscrimination and translated materials for EU good practices,***" the objective is "to raise awareness of Bulgarian citizens on human rights and equal treatment of all social groups". If he actually needed more information for the planned event, the Mayor of V. had enough time and opportunities to contact organizers and ask additional questions. Furthermore, there is no litigation of the telephone conversations with municipal administration in the city of V., when representatives of complainant were assured that their request was eligible.

3. By virtue of the Events, Meetings and Manifestations Act, the Municipality Mayor may prohibit implementation of event within 24 hours of its notice. If the authority does not object within that deadline, the event can be implemented. In this case, on 23.08.2005, a day before the event and 47 days after lodging of the application for it, the Mayor of V. sent two letters to M., that are attached to the case file. The first letter No. RD 5-9100/499 of 23.08.2005, sent to M. and three other organizations, alleges that at every specific request for similar events on the territory of V. municipality, a reply was delivered in due time and the municipality is not liable for the consequences of their implementation. It is unclear why is it mentioned that without the respective permit of the municipal administration, no mass events shall be implemented. The letter is dated 23.08.2005 and its warning tone implied that the Mayor of V. was aware that by failing to provide timely reply to X Association request, he made the event impossible. That explains the warning tone of the letter. The second letter No. RD-5-94 x(35) of 23.08.2005 contains a refusal for opening of info-kiosk by virtue of Article 12 point 4 and Article 5 of the Events, Meetings and Manifestations Act, namely – infringement of other individuals' rights and freedoms and prohibition of event planned from 22.00 to 06.00 A.M.

4. The Specialized Permanent Sitting Panel has established that the refusal, accompanied with wide publicity of X Association request, presence of two letters on the same occasion and to the same addressee is uncommon practice that can be logically explained with the media coverage of the refusal, which has created unfavourable environment for the complainant. The Complainant alleges that by 30.08.2005, in X Association office no letter has been delivered. The defendant did not litigate that allegation. The letter is sent on 23.08.2005 of city of V. to X Association address in the city of Sofia. In the same day, however, coverage of the planned event was published in media. The articles quote parts of the letter (see BG F. – "Homo-passions in V. in danger of anathema and Mayor's prohibition", "The Mayor of V. refused to X Association to open information kiosk in the city center" – www.novini.dir.bg, "Church Joined the Game" – www.vsekiden.com, etc.), implying that information has been provided to media not by the complainant but from the municipality of V. The media coverage provoked negative attitudes to persons with different sexual orientation. With its actions, the municipality of V. failed to honour tolerance and diversity.

IV. Indirect discrimination

According to Article 4, Para 3 of PfDA, shall be taken to occur where neutral provision, criterion or practice would put a person (in this case, X Association) on the grounds referred to in Paragraph 1 (in this case, sexual orientation of its members and the organization's mission – to protect the right of sexual orientation) at a particular disadvantage (inability to organize an event) compared to other individuals (legal entities whose mission is different from protection of the right to sexual orientation) through seemingly neutral provision (Mayor's Order for refusal), unless that Order is objectively justified with a legitimate aim and the means for its reaching are appropriate and necessary. The Order

speaks of breaching others' rights and freedoms, which as we said in point I, is not objectively justified. Unjustified is the reason for refusal to "midnight event" because the request explicitly states that the info pavilion will be open between 10.00 and 19.00 P.M.. Therefore, The Specialized Permanent Sitting Panel considers that the right to equal treatment has been breached and indirect discrimination over X association has occurred. Furthermore, since no evidence for non-infringement of the equal treatment right, by virtue of Article 9 of PfDA, the litigation that the right to equal treatment has not been breached remains unproven.

In its opinion, filed under No. 613/19.05.2006, V. municipality Procedure Representative indicates that "V. Municipality has not issued permissions for similar activity on that or on any other place on the territory of the city of V.". Obviously, the municipality of V. has particular attitude to *Association's activities*. In other words, the complainant in its capacity of homosexuals', bisexuals' and trans-sexuals' rights defender through specific activities, has been put in unequal position compared to the rest legal entities whose activity is not related to protection of persons' with different sexual orientation rights. The only criterion that differentiates X Association from other non-profit associations is that specific ground – sexual orientation – of its members. As stated, discrimination on that ground is prohibited by virtue of Article 4, Para 1 of PfDA

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA Fifth Permanent Panel of the Commission for Protection against Discrimination

DECIDED

ESTABLISHES that With its actions, the Municipality of V., represented by its Mayor, has committed discrimination by virtue of Article 4, Paragraph 3 of the Protection from Discrimination Act. It has committed an apparently neutral provision, which combined with the manner of issuing and dissemination of the Order refusing implementation of event organized by X Association, objectively has led to less favourable treatment by virtue of § 1 of Supplementary Provisions of the Protection from Discrimination Act.

IMPOSES to the Municipality of V. property sanction amounting to BGN 500 (five hundred levs).

The Decision shall be delivered of the parties on the case file.

Decision is liable to appeal before the Supreme Administrative Court through Commission for Protection against Discrimination within 14 days of its announcement of the parties by virtue of the provisions of Article 68, Paragraph 1 of the Protection from Discrimination Act.

12. Recommendation No. 2 of 01.07.2008 on case file 132/2008 of the Commission for Protection against Discrimination in its Full Nine-member Panel[12]

Discrimination on the ground of sexual orientation
Art. 13 of the Treaty establishing the European Community
Art. 6, Para.1, Article 32, Para.1, Article 46 of the Constitution of the Republic of Bulgaria
The Universal Declaration of Human Rights
International Covenant on Civil and Political Rights
The European Convention on Human Rights and Fundamental Freedoms
The Charter of Fundamental Rights of the European Union
Art. 5, Art.13, Para 1, Article 66, Para1 of the Draft Family Code, passed to the National Assembly on 01.04.2008 by the Council of Ministers.
Art. 4, Article 47, Para 8 and 10 of PfDA
Art. 7 of CPD Rules of Organization and Operation
Art. 38, Paragraph 1, point D of the Rules for Proceedings before the CPD

Respect for personal life and family in relation to the right to equal treatment as human fundamental rights cannot be limited by action or lack of action of the State in its capacity of regulator of public relations over persons solely due to their sexual orientation. The Republic of Bulgaria as part of the international community that has adopted and applies in practice international instruments for human rights, is obliged to guarantee the right to private life, which could manifest in the right two persons of the same sex to create family with all pursuant legal provision. The opposite means non-implementation of the international duties and obligations of Bulgaria, non-implementation of its duties and obligations pursuant to country's EU membership and the declarative but yet not enacted norm for non-discrimination of persons with different sexual orientation.

Lack of formal legal recognition of the factual cohabitation between single-sex couples in Art.13, Para.1 of the draft Family Code puts persons with different sexual orientation in less favourable situation.

I. **The issue was raised** before the Commission for Protection against Discrimination (CPD) with a complaint registered under No. 12-20-30/11.04.2008 of X Association, represented by P.G. By Order No. 000/00.00.0000 of the Commission Chairman, a proceeding for protection against discrimination has been initiated and the case file was assigned to Five Member Expanded Sitting Panel due to grievances for discrimination on the ground of *sexual orientation* and *marital status*, i.e. multiple discrimination. With report under No. 00-00-000/00.00.0000, the rapporteur on case file suggested to the CPD Chairman amendments to the draft Family Code passed to the National Assembly on 1st of April 2008 and subject to discussion at the Commission on Legal Affairs, to be discussed at a CPD regular sitting, pursuant to CPD powers under Article 47, Para 8 and 10 of PfDA in conjunction to Article 7 of the Rules for Organization and Activities of CPD, Article 38, Paragraph 1d, of the Rules for Proceedings before CPD and complainant's requests.

Investigation and opinion shall establish of the following provisions of the draft Family Code are discriminating:

[12] Not appealed.

1. Article 5 of the draft Family Code reads, "Marriage is contracted by the mutual consent of a man and a woman given personally and simultaneously before the officer for civil status", in conjunction to Article 46, Paragraph 1 of the Constitution of the Republic of Bulgaria – "Marriage is voluntary union between a man and a woman."

2. Article 13, Paragraph 1 of the draft Family Code reads "Factual marital cohabitation between a man and a woman have legal significance in cases provided by Law."

3. Article 66, Paragraph 1 of the draft Family Code that reads "For father of the child, the partner of mother shall be considered, if the child has been born during factual marital cohabitation or before 300 days of its termination have passed."

II. Competence of the Commission for Protection against Discrimination

On one hand, by virtue of Article 40, Paragraph 1 of PfDA[13] Commission for Protection against Discrimination is an independent specialized state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities and in that sense it is the competemt authority to judge whether Article 4, Para 2 of PfDA has been violated. By virtue of Article 7, point 1 of Rules for organization and activities of CPD, the Commission participates with other state bodies through opinions or participation at drafting of legal regulations, exercises monitoring and takes measures for compliance of Bulgarian antidiscrimination legislation with EU legislation and international legal acts. In that sense, the Commission for Protection against Discrimination, as a national specialized equality body, aside of monitoring the PfDA observance, is obliged to monitor the compliance of Bulgarian antidiscrimination legislation with international acts, the Treaties establishing the European Union and the major principle of equality and non-discrimination.

II. This Recommendation affirms that the right to respect for personal and family life, pursuant from the right to equal treatment as fundamental human rights cannot be restricted with action or inaction of the State in its capacity of regulator of public relations against one person and solely due to his/her sexual orientation. The Republic of Bulgaria as part of international community, having adopted and applied in practice the international instruments for human rights, is obliged to guarantee the right to private life that could appear as the right of two persons of the same sex to create family with all pursuant legal provision. The opposite means non-implementation of Bulgaria's international duties and obligations, non-implementation of duties and obligations, pursuant from country's EU membership and the declarative but not enforced norm for non-discrimination of persons with different sexual orientation.

III. Concerning Article 5 of the Draft Family Code in conjunction to Article 46, Paragraph 1 of the Constitution.

1. The Commission for Protection against Discrimination is not empowered to deliver opinion if there are discriminating provisions in the Constitution of the Republic of Bulgaria. The specific order of amending the Constitution, its status of basic law in the State and CPD lack of explicit power for deliver opinions for discriminating provisions in the Constitution speaks that CPD is not competent to establish discriminatory nature of constitutional provisions.

[13] Prom. SG, issue 86 of 30.09.2003, in force since 1.01.2004, amended issue 70 of 10.08.2004, in force since 1.01.2005, amended issue 105 of 29.12.2005, in force since 1.01.2006, issue 30 of 11.04.2006, in force since 12.07.2006, amendments, issue 68 of 22.08.2006, amended, issue 59 of 20.07.2007, in force since 1.03.2008, amended, issue 100 of 30.11.2007, in force since 20.12.2007.

2. Constitution explicitly promulgates that marriage is voluntary union between a man and a woman. The Constitution excludes marriage between persons of the same sex.

3. Due to the categorical and clear nature of the constitutional provision, the current and the new draft Family Code shall follow that provision. Therefore, the provisions of Article 5 of the new draft Family Code confirming constitutionally promulgated text, even if found to be discriminatory, cannot be amended before amendments to the Constitution. Therefore, the Commission shall not deliver opinion on the question if there is discrimination in it.

IV. In regard with Article 13, Paragraph 1 of the Family Code - Factual marital cohabitation between a man and a woman has legal significance in cases considered by the Law."

A: Sexual orientation in the context of international acts on human rights.

1. The Universal Declaration of Human Rights was adopted and promulgated on 10 December 1948 with Resolutions 217 A (III) of the UN General Assembly. Although named declaration, its significance exceeds mere findings and its referring by governments and international organizations has turned it into a compass for interpretation and application of legal norms.

Art. 12 of the Universal Declaration stipulates, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 2 reads, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

The Universal Declaration was adopted in 1948 but does not mention explicitly the ground of "sexual orientation" as a relevant ground for discrimination, however, as evident from quoted in Article 2, the list of grounds is not comprehensive.

2. The International Covenant on Civil and Political Rights[14] of 16 December 1966 is sustained in Article 17 on the right to private life and family. Article 26 of the International Covenant on Civil and Political Rights promulgates: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Similar provision is found also in Article 2, point 2 of International Covenant on Economic, Social and Culture Rights). In that sense the right to private life shall be observed for all persons without discrimination.

3. Do above-mentioned provisions apply to persons with different sexual orientation? The answer is affirmative since: firstly, the list with the grounds in Article 2 of the Universal Declaration and Article 26 of International Covenant on Civil and Political Rights is not exhaustive. Secondly, with part IV of the International Covenant on Civil and Political Rights, the UN Human Rights Committee has been established with two main functions – "surveillance" and "complaints". Complaints can be lodged by individuals who believe that

[14] Ratified with a Decree 1199 of the Presidium of the National Assembly as of 23.07.1970, in force for Bulgaria since 23.03.1976.

their rights by virtue of the Covenant have been infringed. Sometimes, such complaints refer to the non-inclusion of sexual orientation as explicitly mentioned ground in the International Covenant on Civil and Political Rights. The UN Committee on Human Rights provides interpretation of that omission, ordaining that the ground "gender" in Article 2 of the Universal Declaration and Article 26 of the International Covenant on Civil and Political Rights shall be interpreted in wider sense, encompassing sexual orientation. It is also stated that the rights proclaimed in those two international acts cannot be denied on the ground of sexual orientation[15].

4. The second part of Article 26 of the International Covenant on Civil and Political Rights stipulates that the states who are parties under the Covenant, are obliged not to discriminate through their laws. The draft Family Code and in particular Article 13, Paragraph 1 indicate that. with the introduction of factual cohabitation the State recognizes that the concept on family is wider that the concept of marriage, eliminating the discrimination on the ground of "marital status". The State however does not eliminate the existing inequal treatment of persons with homosexual orientation. The right to respect for personal life and family is observed for persons with heterosexual orientation, for persons of the same sex that right is denied. Inaction of the State is clearly discriminatory and violates directly the pursuant duties and obligations under the International Covenant on Civil and Political Rights.

B: European Convention on Human Rights and Fundamental Freedoms.

1. The European Convention on Human Rights and Fundamental Freedoms (ECHR) was adopted under the auspices of the Council of Europe, a regional intergovernmental organization established after the Second World War. ECHR was ratified with Act of the National Assembly of Bulgaria on July 31st 1992, promulgated in State Gazette, issue 80/02.10.1992 and in force, being part of domestic law and by virtue of Article 5, Paragraph 4 of Bulgarian Constitution, having superiority over the contradicting norms of domestic legislation. As an international treaty, ECHR is often assessed as unprecedented, since aside being a register of fundamental human rights, it has created a mechanism for their efficient protection through international court institution.

2. Article 8 of ECHR stipulates that everyone has the right to respect for his or her private and family life, his home and his correspondence. Article 8, Paragraph 2 stipulates, "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". That second paragraph shall be read carefully and interpreted restrictively. Key principle for the European Court of Human Rights (ECtHR) jurisprudence is the idea that ECHR is a living entity that is not static but develops to meet the needs of modern society and concept for human rights. The principle of effectiveness or *effet utile*, adopted in court practice and ECtHR on each case judges the situation of the individual, interpreting the provisions referring to to rights and freedoms in wider sense and takes more restrictive approach to their limitations.

In its judgements, ECtHR considers homosexuality as part of individual space, as evident from the cases Dudgeon v. United Kingdom and Norris v. North Ireland.. There, it is explicitly noted that the right to sexual orientation is part from the right to private life.

[15]Human Rights Committee, Toonen v. Australia, Paragraph 8.7, Communication 488/1992, UN Doc. CCRP/C/50/D/488/1992 (1994) and Young v. Australia, Paragraph 10.4, Communication 941/2000, UN Doc. CCRP/C/78/D/941/2000 (2003).

3. As of to the idea for family, ECtHR case law differentiates between contracting a marriage and creating a family. The Court recognizes that family by virtue of Article 8 is a wider concept than the family created through marriage[16]. In that sense each person has the right of family recognition, regardless if it concerns family created through contracting a marriage or family in result of the factual cohabitation. Family is based on relations that are so deeply connected to human mentality and emotionality that attempt to restrain that right can arise only from utmost need and prevention of damage. The refusal to regulate the right to family of same-sex couples is not motived with prevention of actual damages. One's sexual orientation cannot harm others and thus, it should be acknowledged as relevant ground in the above-mentioned international acts and ECHR. In this case, contradicting to the restrictive approach adopted by the ECHR, the Republic of Bulgaria strongly limits the respect for personal and family of homosexual couples.

4. ECHR contains provision that prohibits discrimination to exercising of rights and freedoms, promulgated therein – Article 14. Article 14 does not mention explicitly sexual orientation as a ground. In its recent practice, ECtHR has judged many times on sexual orientation as relevant ground in relation to the right to private life by virtue of Article 8 and prohibition of discrimination by virtue of Article 14[17]. In decision E.B. v. France, the Court explicitly ordains discrimination on the ground of sexual orientation (Art. 14) in relation to the right to provate and family life by virtue of Article 8 due to French government's refusal to permit adoption of a child by a woman with homosexual orientation. In the judgement H.G. and G.B. v. Austria, dated 2 June 2002, and L. and V. v. Austria dated 9 January 2003, the ECtHR ordains that Austria has breached Article 14, treating homosexual couples differently compared to heterosexual through provisions of the Penalty Code.

5. Based on above stated, the Commission for Protection against Discrimination considers that the State's refusal to recognize family between two persons of the same sex and its refusal to settle certain legal relations constitutes discrimination by virtue of Article 14 in conjunction to Article 8 of ECHR. Through its inaction, i.e. refusal to recognize legally the cohabitation between two persons of the same sex, the State denies implicitly that such persons can create family. That contradicts with the ECHR regulations and ECtHR case law and breaches the duties and obligations taken by the State under ECHR.

C: Sexual orientation in the context of the right to European Union.

1. European integration starts as economic integration. The idea for united Europe, however, is found on the will to build a community that will not allow Europe to become a bloodshed battlefield again with concentration camps, uncontrolled hatered where not the individual matters but his or her ethnicity, nationality or sexual orientation.

2. With the Amsterdam Treaty of 1997, Part I of the Treaty establishing the European Community entitled "Principles", creates Article 13. According to Article 13. The Council of EC, following proposal of the European Commission and after consultations with the European Parliament, can undertake appropriate actions to combat discrimination on the

[16] ECHR Judgment on case Bereab v. the Netherlands of 21 June 1988; in the article "On the New Family Code", published in "Legal World" magazine, issue 1/1999 Professor Tzanka Tzankova states that: "Factual spousal cohabitation should not be juxtaposed to marriage but shall be recognized as a ground for creation of a family. It shall be a form allowing persons to realize their fundamental right of private life and family." Professor Tzankova views are rhat Article 8 of of the European Convention on Human Rights and Fundamental Freedoms settles two independent rights – to marriage and to family, the latter can be realized also through actual cohabitation.

[17] See also Judgment E.B. v. France dated 22 January 2008, Para 92; Judgment Johnston v. United Kingdom, etc.

ground of gender, race or ethnic origin, religion or beliefs, physical or mental disability, age or **sexual orientation**.

3. Article 13, as introduced in the Treaty establishing the European Community, is not just evidence for the importance of combating discrimination, but hard proof of a principle that for long time has been unwritten rule interpretation and application of the *acquis communautaire*. The right to equal treatment together with the right to freedom of movement are long-term and undisputable principles of European Community legal system. Prohibition of discrimination on the ground of sexual orientation results from the difficult path undergone by the European legal thought and is not a one-time and impulsive act of democracy.

4. To overcome prejudices and stereotypes, the practice of the The Court of Justice of the European Communities, usually called the European Court of Justice (ECJ) has played major role. From the beginning, ECJ insists that EC shall be considered superior compared to incontradicted legal provisions of Member States' domestic legislation, since otherwise they would have questioned its essence and effectiveness. Although personal status is an issue left within Member States' competence and acquis communautaire does not regulate that matter, to exercising of their national powers Member States are obliged to monitor the compliance of their domestic legislation with the *acquis communautaire*, especially the equal treatment provisions[18].

6. In regard with prohibition of discrimination of persons with different sexual orientation begining can be found in the Resolutions of the European Parliament of 8 February 1994 for equal rights of homosexuals and lesbians in the EU. As we said, signing of the Treaty of Amsterdam and the inclusion of sexual orientation and prohibition of discrimination in Article 13 of the Treaty establishing the European Community. Thus, they are recognized together with the grounds ethnicity, religion, gender, age and disability for all Member States.

7. Inclusion of the European Union's Charter of Fundamental Rights in the Lisbon Treaty in December 2007 confirms on primary law level and without the clumsy style of the Amsterdam agreement the right to recognition of personal life and prohibition of discrimination. The Lisbon Treaty, signed on 13 December 2007, should be ratified by the end of 2008 and to enter into force since 01.01.2009 to 23.05.2008 fourteen Member States have ratified the Lisbon Treaty.

The Charter of Fundamental Rights of the European Union has been created as a peculiar list of those rights that shall guarantee creation of a closer union of values between peoples of the European Union. The Preamble of the Charter explicitly emphasizes on its aim, namely – to make more visible the fundamental human rights. Article 7 promulgates: "Everyone has the right to respect for his or her private and family life, home and communications." Article 21 of The Charter explicitly indicate that: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

Bulgaria ratified the Lisbon Treaty on March 21, 2008. Thus, Bulgarian state shall guarantee the right to private life and family, banning discrimination of persons with different sexual orientation. It is irrelevant when the Lisbon Treaty will enter into force. Discrimination against homosexual couples exercised through lack of action contradicts to Article 7, Article 2 of the Lisbon Treaty.

[18] Decision of the European Court of Justice of 01.04.2008 on case 267/06; case 372/04, case 444/05.

10. In fact, at present some Member States have not regulated factual cohabitation of two persons of the same sex. By virtue of the Lisbon Treaty ratification, however, the Republic of Bulgaria is obliged to ban discrimination of those persons[19].

The Commission for Protection against Discrimination considers that in implementation of the afore mentioned, the Republic of Bulgaria is obliged to adopt legislation that does not contradict the Treaties establishing the European Communities, and the *acquis communautaire* basic principles. Through its failure to act and refusal to recognize for legitimate family relations between two persons of the same sex, the State breaches its duties and obligations as a full-fledged EU member and allows existence of discrimination against persons with different sexual orientation.

D: Sexual orientation in the context of Bulgarian Protection from Discrimination Act and Bulgarian legislation.

1. Many opponents of the regulation of factual cohabitation between persons with homosexual orientation indicate that Article 6, Paragraph 1 of the Constitution of the Republic of Bulgaria does not mention sexual orientation as protected ground for discrimination. In interpretory Decision No. 3 of 5.07.2004, the Constitutional Court of the Republic of Bulgaria has considered the question for correlation between the equality of Bulgarian citizens and the EU Charter of Fundamental Rights and for need of further amendments to the text of Article 6 of the Constitution of the Republic of Bulgaria. Constitutional Court indicates that "creation of additional rights pursuant from country's EU membership, shall widen the scope of the rights they already have. Article 57, Paragraph 1 of the Constitution prohibits deprivation of rights, not their enlargement." The provisions of Article 6 of Constitution shall be interpreted according to EC law and the Charter of Fundamental Rights includes sexual orientation as relevant ground.

2. Article 4, Para 1 of PfDA explicitly indicates sexual orientation as one of the grounds protected against inequal treatment. Over four years ago, considering international instruments for protection human rights and with achievements of the *acquis communautaire,* Bulgarian legislator judged that sexual orientation is a characteristic so deeply connected with one's intimate world that any discrimination on that ground is inadmissible. The Commission for Protection against Discrimination considers that PfDA provision shall be interpreted in relation to the right to private life, promulgated in the Bulgarian Constitution. Article 32, Paragraph 1 of the Constitution indicates that private life of citizens is inviolable and everyone is entitled to protection against unlawful intervention in private and family life and against violation over one's honour, dignity and reputation.

3. The failure to settle factual cohabitation between homosexual couples with the draft Family Code is State's refusal to recognize equal rights of persons with different sexual orientation compared to heterosexual couples. Thus, it directly contradicts to PfDA and if in the case of marriage, one can assume that State is adhering to traditional values, in the case pf factual cohabitation there are no such arguments. Refusing to recognize factual cohabitation

[19] In three Member States – Belgium, Netherlands and Spain, contracting of marriage between one-sex persons is permitted. In ten Member States – Czech Republic, Denmark, Finland, France, Germany, Hungary, Luxembourg, Slovenia, Sweden and Great Britain – the issue of regulationg one-sex persons relations is arranged through registered factual cohabitation. In two Member States – Austria and Portugal – factual cohabitation without registration is recognized. Recognition is subjected to public debate and discussion in Greece, Ireland, Italy, Latvia, Lithuania, Estonia, Poland, Romania and Slovakia. Only Bulgaria, Cyprus and Malta are Member States where that issue hasn't been raised yet.

between persons of the same sex, the State denies legitimacy of that cohabitation and rights. In that manner, the State in fact and *de juris* denies sexual orientation as legitimate ground on which inequal treatment is prohibited.

4. Article 13, Paragraph 1 of the draft Family Code indicates that factual cohabitation shall matter only in cases considered by the law. Let us overview some of the rights covered in the domestic legislation pursuant of the factual cohabitation:

a) Partner's right to refuse to evidence by virtue of Article 119 and 121 of Penal Procedure Code[20] - excluding persons with homosexual orientation, which denies their ability to love and affection, i.e. to be subjective; then the refusal to witness is liable to sanctioning. Those provisions are typical example for direct discrimination by virtue of Article 4, Para 2 of PfDA.

b) the right to Entry and Residence in and Departure from the Republic of Bulgaria by virtue of Entry and Residence in and Departure from the Republic of Bulgaria Act for citizens of the European Union and their family members[21] - by virtue of paragraph 1, point 1, family members of an European Union's citizen is a person who has contracted a marriage or *has the factual cohabitation with citizen of the European Union.* In that case the factual cohabitation between a citizen of EU Member State and citizen of a non-EU state, although legally recognized in the Member State, in Bulgaria does not have the legal consequences stipulated in the Law for the Right of Entry, Residence and Exit of European citizens and members of their families on the territory of the Republic of Bulgaria. That will be another example for direct discrimination on the ground of sexual orientation.

c) the right to protection against domestic violence by virtue of Article 2 and 3 of the Protection against Domestic Violence Act[22] - special protection does not apply to persons with different sexual orientation, who have suffered domestic violence;

d) right to financial compensation on Assistance and Financial Compensation Act to the victims of of infringements[23];

e) permission for permanent residence virtue of Article 24, point 14 of Law for the Foreigners in the Republic of Bulgaria[24] - that provision excludes permission for residence to same-sex partners. The last statement contradicts with Article 4, Para 2 of PfDA.

The factual cohabitation between persons of the same sex will have another legal consequence that is already acknowledged by the court case-law on persons of different gender – partner's right for compensation of non property harms to illicit damages[25]. That right ensues of the assumption for strong affection between two persons who live together as a family and in case of one's death or disability, the other suffers the same anguish as persons

[20] Promulgated in SG, issue 86 of 28.10.2005, in force since 29.04.2006, amended, issue 46 of 12.06.2007, in force since 1.01.2008, amended, issue 109 of 20.12.2007, in force since 1.01.2008.

[21] Promulgated in SG, issue 80 of 3.10.2006, in force since date of entry into force of the Accession Treaty for Republic of Bulgaria to the European Union - 1.01.2007, amended, issue 109 of 20.12.2007, in force since 1.01.2008.

[22] Promulgated in SG, issue 27 of 29.03.2005, amended, issue 82 of 10.10.2006

[23] Promulgated in SG, issue 105 of 22.12.2006, in force since 1.01.2007

[24] Promulgated in SG, issue 153 of 23.12.1998, amended, issue 70 of 6.08.1999, in force since 1.01.2000 amended, issue 42 of 27.04.2001, in force since 27.04.2001, issue 112 of 29.12.2001, in force since 1.01.2002, amended, issue 45 of 30.04.2002, in force since 30.04.2002, issue 54 of 31.05.2002., in force since 1.12.2002, amended issue 37 of 22.04.2003, issue 103 of 25.11.2003, in force since 26.02.2004, amended issue 37 of 4.05.2004, in force since 4.08.2004, issue 70 of 10.08.2004, in force since 1.01.2005, amended issue 11 of 1.02.2005, issue 63 of 2.08.2005, amended issue 88 of 4.11.2005, issue 30 of 11.04.2006, in force since 12.07.2006, issue 82 of 10.10.2006, issue 11 of 2.02.2007, amended issue 29 of 6.04.2007, issue 52 of 29.06.2007, supplemented issue 63 of 3.08.2007, amended issue 109 of 20.12.2007, in force since 1.01.2008, suppl., issue 13 of 8.02.2008, in force since 8.02.2008, amended, issue 26 of 7.03.2008, suppl. issue 28 of 14.03.2008.

[25] Decree of Supreme Court Plenary No 5/1969.

having committed a marriage. The State denies that such suffering can be acknowledged for persons who live together as a family but are of the same sex.

Based on above stated, the Commission for Protection against Discrimination considers that the refusing to recognize factual cohabitation between single-sex couples puts persons with different sexual orientation in less favourable situation as compared to those with heterosexual orientation regarding the rights pursuant from factual cohabitation, which consitutes direct discrimination by virtue of Article 4, Para 2 of PfDA in conjunction to Article 32, Paragraph 1 of the Constitution. The failure to regulate factual cohabitation, i.e. State's inaction breaches international acts on human rights – Article 17 in conjunction to Article 26 of the International Covenant on Civil and Political Rights and Article 8 in conjunction to Article 14 of ECHR - and contradics to the duties and obligations that the Republic of Bulgaria has taken as a full-fledged member of the European Union. The Commission for Protection against Discrimination considers that the text of Article 13, Paragraph 1 of the Family Code should read: "Factual marital cohabitation between two partners has legal significance in cases envisioned by Law".

V. In regard with Article 66, Paragraph 1 of the draft Family Code.

That provision establishes the assumption for fatherhood. Since two persons of the same sex cannot create generation in a natural manner, the assumption for fatherhood cannot be applied on single-sex couples. Therefore, the Commission does not consider that so formulated provision of Article 66, Paragraph 1 of the draft Family Code is discriminatory.

Based on all afore mentioned and by virtue of Article 38, Paragraph 1d of the Rules for Proceedings before CPD, the Commission in its full Nine-member Panel

DECIDED

RECOMMENDS by virtue of Article 47, Para 8 of the Protection from Discrimination Act to the Council of Ministers as a subject with legislative initiative by virtue of Article 87, Paragraph 1 of the Constitution of the Republic of Bulgaria to prepare and pass to the National Assembly draft amendments of Article 13, Paragraph 1 of the Draft Family Code, including the single-sex couples in the scope of provision.

This Recommendation shall be deliveder to the Prime Minister and the complainant.

The Recommendation is delivered also to the Commission on Legal Affairs to the National Assembly of the Republic of Bulgaria to express opinion on the discussed draft law by virtue of Article 47, Para 8 of the Protection from Discrimination Act.

This Recommendation constitutes opinion of the competent equality body of the Republic of Bulgaria in implementation of its powers to eliminate all forms of discrimination.

Section IV

Discrimination on the ground of ethnic origin

13. Decision No. 16 of 09.05.2006 on case file No. 22/2005 of CPD First Specialized Permanent Panel [26]

Discrimination on the grounds of ethnic origin
Art. 4, Para 1, Article 4, Para 2 in conjunction to § 1, point 8 , Article 5 in conjunction to § 1, point 1, Article 9, Article 17 of PfDA
Art. 27 of the Administrative Infringements and Sanctions Act

V.P. deed committed against S.G. consitutes harassment by virtue of § 1, point 1 of PfDA Supplementary Provisions, since in its essence is verbally expressed unwanted behaviour. Even if V.P. meant to joke with his statement, without any objective in mind, his behaviour has offended S.G. dignity and has created offensive environment for him. That unwanted behaviour results from the presumed different ethnic origin of S.G., a conclusion imposed by the shared burden of proof rule, established in the provisions of Article 9 of PfDA. No evidences, supporting the conclusion that the right to equal treatment has not been violated, have been produced. The presumed different ethnic origin by virtue of § 1, point 8 of PfDA justifies the conclusion that harassment has been concurred on the grounds by virtue of Article 4 Paragraph 1 of PfDA Harassment by virtue of Article 4 Paragraph 1 of PfDA is considered as discrimination, leading to the conclusion that executed by V.P. deed consitutes administrative violation by virtue of Article 78 Paragraph 1 of PfDA.

The proceedings on the case file is initiated on signal by I.V. - manager of B. – a complex managed by CoM by October 2005, currently by the Ministry of State Administration and Administrative Reform, filed at the Commission for Protection against Discrimination under No. 107 of 23.12.2005.

The proceedings is initiated by virtue of Section I, Chapter Four of the Protection against Discrimination Act (PaDA).

The applicant alleged that on 19.10.2005 in the city of Sofia, at the canteen of B., V.A.P. discriminated S.S.G., who is not of Bulgarian ethnic origin, through rude attitude and expelling him from a table at the canteen that V.A.P. considered his table, as he always ate at it. The signal lays considerations for direct discrimination as less favourable treatment on the ground of ethnic origin, since only S.G. was of Roma origin among all workers. At the open hearing on 25.04.2006 the sender of the signal through his authorized representative alleged that V.A.P. dded consitutes harassment on the ground of ethnic origin.

Complainant's grievances indicate as possible infringer and the defendant V.A.P.

The Commission finds the signal eligible considering the term of administrative authority referral by virtue of Article 52, Paragraph 1 of PfDA There are no negative provisions, impeding initiation of the proceedings and consideration of the signal in essence.

Based on enclosed written evidences, heard at an open hearing witness evidences, written explanations and opinions of the parties, the Commission has established the following:

B. complex is one of the venues commissioned for management and use to the Ministry of State Administration and Administrative Reform under paragraph 2 of Decree No. 215 of 12.10.2005 on adoption of Rules of Order of the Ministry of State Administration and Administrative Reform. The Manager I.V. has lodged complaint at the Commission for

[26] Decision has entered into force .

Protection against Discrimination, requesting for initiation of a proceeding for protection against discrimination. From the complaint it was established that it represents a signal by virtue of Article 50, point 3 of PfDA, of the legal entity B. complex to Ministry of State Administration and Administrative Reform. In implementation of Order No. 4 dated 10.01.2006, signal's author has clarified that asks the Commission for Protection against Discrimination to established infringement and infringer, wronged party and to determine sanction type and amount.

By the moment of committing alleged infringement, V.A.P. was under labour relations with B. complex and occupied the position "elevator technician". S.S.G. works at B. complex as a gardener and was the only worker of Roma origin. S.S.G. started little before the date of infringement. B. complex disposed of canteen where workers and employees had their meals. There was no practice workers and employees to book tables at the cabteen, or other rules determining persons' places and seats at the canteen. On 19.10.2005, S.S.G. went to have lunch at the canteen of B. complex in city of S.For the first time. After buying his meal, he sat at an empty table. Meanwhile, V.A.P. entered the canteen and passing by S.S.G., he told him, "Don't sit on that place again, it is mine". In his explanations, the witness S.S.G. first said that statement referred to the table (page 8 of the Records of 25.04.2006). V.A.P. alleges that statement referred only to the seat and not to the whole table (p.11 of the Records of 25.04.2006). Following V.A.P. litigation, the witness S.S.G. has clarified that the statement did not refer to the table (page 11 of the Records of 25.04.2006). V.P. words have offended S.G. dignity, who advised, "I felt uneasy" (page 9 of the Records of 25.04.2006). Hearing V.A.P. comments, S.G. asked the witness M. who sat at another table if he could sit next to him ad after receiving affirmative reply, he moved at that table. V.A.P. did not litigate S.S.G. allegations but insisted that he meant to joke. Seeing that S.S.G. has moved to another table, V.A.P. exclaimed, "Oh, you moved to another table; why did you do that?" V.A.P. defended himself stating that he had friends of Turkish and Roma origin and in this case, his attitude was not meant as an offense to S.S.G. but as "a joke". The occurrence was witnessed by the workers M. and D. who had their lunch at the canteen. By D. report, the incident was reported to B. complex Manager, who conducted a check-up according to his duties and obligations by virtue of Article 17 of PfDA and by virtue of the Labour Code. With Order No. 145 of 21.10.2005, V.A.P. was imposed with a sanction "dismissal for disciplinary infringement" due to ethnic-based intolerance to another worker, V.A.P. labour contract was terminated with Order No. V-119 of 21.10.2005.

In the signal, it is alleged that S.S.G. is of Roma origin. At the sitting on 25.04.2006, the witness S.S.G. alleged that he identifies himself as Bulgarian but considering his features (dark skin colour), he is of Turkish origin, however he has been raised in a facility for children without parental care, has no family and thus, Bulgarian is his mother tongue. The witness S.S.G. alleges that his looks and skin colour imply his ethnic origin. S.S.G. features and in particular his darker skin colour have been a reason tor assume that he belonged to another ethnic community, probably Roma.

The Commission for Protection against Discrimination in this Panel accepts that the deed committed on 19.10.2005 by V.A.P. to S.S.G. consitutes harassment by virtue of § 1, point 1 of PfDA Additional Provisions, since essentially it is unwanted verbally expressed behaviour. Even if V.A.P. meant to joke without any objective, his behaviour has offended S.S.G. dignity and has created offensive environment. That unwanted behaviour roots in the presumed different ethnic origin of S.S.G., a conclusion pursuant from theshared burden of proof rule, stipulated in the provisions of Article 9 of PfDA. Any evidence supporting the conclusion that equal treatment principle has not been violated, haven't been produced. The presumed ground ethnic origin by virtue of § 1, point 8 of PfDA substantiates the conclusion that harassment on grounds by virtue of Article 4, Para 1 of PfDA has occurred.

Harassment on the grounds by Article 4, Para 1 of PfDA is considered discrimination, imposing the conclusion that the deed of V.A.P. consitutes administrative violation by virtue of Article 78, Para 1 of PfDA, an infringement sanctioned with penalty fine amounting to BGN 250 - 2000. In that case, wronged person is S.S.G., born on 00.00.0000, resident of the city of S., XXXX Street.

Considering the provisions of Article 27 of Administrative Violations and Sanctions Act, sanction is determined by burden of infringement, inducements for it, mitigating and aggravating circumstances and property status of the infringer. In this case, considering that the labour contract of V.A.P. was terminated and no evidence for labour or other incomes have been found, the Commission established that the sanction of minimum amount specified in the provisions of Article 78, Para 1 of PfDA, shall warn and educate the infringer to observe Article 4, Para 1 of PfDA, and shall have awareness-raising and warning effect on the rest citizens.

Considering above stated and by virtue of Article 65, point 1-3 of PfDA , Article 47, point 1-3 of PfDA and Article 78, Para 1 of PfDA, CPD First Permanent Panel by virtue of Article 48, Paragraph 2, point 1 of the Protection from Discrimination Act, specialized in cases of discrimination on the ground of ethnic origin and race,

DECIDED

ESTABLISHES in the relations between B. complex to the Ministry of State Administration and Administrative Reform, represented by its Manager I.V., resident of the city of S., Str. XXXXX and V.A.P., holder of ID No. 00000000, resident of the city of S., Str. XXXX, that on 19.10.2005 in city of S.V.A.P. has committed discrimination against S.S.G., born on XXXXXXXX, constituting harassment on the ground of ethnic origin, committed through verbally expressed unwanted behaviour that has offended wronged person's dignity and has created offensive environment for him, violating the prohibition of Article 4, Paragraph 1 of PfDA in conjunction to Article 5 of PfDA and constituting administrative violation by virtue of Article 78, Para 1 of PfDA.

ESTABLISHES as person wronged by the infringement, by virtue of Article 78, Para 1 of PfDA S.S.G., born on XXXXXXXX, resident of the city of S., XXXX Street.

IMPOSES to V.A.P., holder of ID No. 00000000, resident of the city of S., Street XXXX by virtue of Article 78, Para 1 of PfDA an administrative coercion "fine" amounting to BGN 250 (two hundred and fifty levs).

Decision is liable to appeal through Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement.

14. Decision No. 38 of 27.07.2006 on case file No. 28/2006 of CPD AD HOC Sitting Panel[27]

Discrimination on the grounds of ethnic origin
Art. 4, Para 2 in relation to § 1, point 8, Article 7, Article 9, Article 37, Article 50, point 2, Article 62, Paragraph 2, Article 78, Para 1 of PfDA
Art. 82, Paragraph 1, point 1 of the National Health Act;

Since no evidence proving that the usual practice of the Center for Urgent Medical Aid in the town of M. for all individuals is as in that case, the Commission considers that the failure to register phone calls from relatives requesting for urgent medical aid in a neighborhood inhabited with prevalent Roma population and the failure to forward them for implementation without intervention of the police consitutes direct discrimination by virtue of Article 4, Para 2 of PfDA, since it displays less favourable treatment on the ground of ethnic origin, compared to treatment rendered at similar circumstances to other Bulgarian citizens, who receive urgent medical aid without involvement of the Police. The treatment in this case is less favourable, since is is an act offending a right pursuant from Article 82, Paragraph 1, point 1 of the National Health Act, and V.G. legal intrest as Bulgarian citizen, to get urgent medical aid, even if he did not have health insurance. The urgent medical aid is a kind of medical service that falls outside the scope of compulsory healthcare insurance and its provision at less favourable conditions, in this case only after Police intervention, consitutes infringement of Article 37 of PfDA, which is a particular case of direct discrimination.

Evidences that by virtue of Article 9 of PfDA prove that the equal treatment principle has not been breached. Any of the provisions of PfDA Article 7 for justified inequality of treatment have not been found.

The agreement based on the equality principle and envisioning joint actions for prevention of discrimination, meets the requirements of Article 62, Para 2 of PfDA, thus is liable to Commission's approval.

The proceedings are initiated by Order No. 53 dated 15.02.2006 of CPD Chairman, on complaint No. 104 of 22.12.2005 lodged by A.G.H. from the town of M. and a signal registered under No. 75 of 24.01.2006 for self-referral by virtue of Article 50, point 2 of PfDA by Associate Professor Blagoy Vidin, Member of the Commission for Protection against Discrimination.

The proceedings is by virtue of Section I of Chapter Four of the Protection from Discrimination Act (PfDA).

The complaint and the signal, accompanied by article excerpt from "T." newspaper from 28.12.2005, present grievances for concurred discrimination on the ground of ethnic origin in the provision of urgent medical aid to V.G., who is of Roma origin, resident of K. neighborhood in the town of M., inhabited mostly with Roma population. According to the complaint, the signal and the publication in T. newspaper on 28.12.2005, V.G. needed urgent medical aid and on 16.12.2005 around 3.00 o'clock after midnight his son A.V. called telephone number 150 and requested urgent medical aid. He was answered that a team of Urgent Medical Aid will not go to K. neighborhood at 03:00 o'clock in the morning. J.Y.

[27] Decision has entered into force in its part establishing the discriminatory acts and its perpetrator and the approved agreement. The decision was amended in the part specifying the sanction imposed by Article 78 Para.1 of PfDA. With Decision No. 12457/12.12.2006 under administrative file No. 9168/2006 of the Surpreme Administrative Court, confirmed with Decision No. 6038 of 13.06.2007 under administrative file No. 1820/2007 of the Surpreme Administrative Court, Five-Member Panel - Second Chamber.

called again with a request for urgent medical aid to V.G. and the provision of health service was refused again. Then, V.G. relatives sougt assistance from the Police to call a team of Urgent Medical Aid (emergency medical service). Only after interference of the Police, the medical service was rendered.

Grievances indicate that the defendant in this proceeding is a potential infringer - the call-center operator on duty at the Center for Urgent Medical Aid in the town of M. and the Center for Urgent Medical Aid in the town of M. as legal entity that possibly has committed the alleged discrimination while implementing its duties. During the investigation, it was established that assistant doctor L.Z.P.. from the town of M. Has been operator on duty in the Center for Urgent Medical Aid in the town of M. in the night of 15-16 December 2005.

The Center for Urgent Medical Aid in the town of M. Stated that obviously there had been delay in the delivery of health service – urgent medical aid to V.G. due to subjective reasons, i.e. negligence of the operator on duty L.Z.P., who registered the call from the Regional Police Office in the town of M. and commissioned it to paramedics team but did not exercise his duties and obligations by virtue of Article 9, Paragraph 3, point 3 of the Rules of Organization and Operation of Center for Urgent Medical Aid for the calls from V.G. relatives, made before the phone call from the Regional Police Office in the town of M. In the course of the proceedings before CPD, an agreement between the Center for Urgent Medical Aid in the town of M. and Association R.O.S. - M. for equal treatment and termination of proceedings has been presented.

In the course of proceedings and in his written defense filed under No. 1039 of 26.07.2006, L.Z.P. litigates the eligibility of proceeding due to A.H.G. lack of representative power, presence of pending penal proceeding, formal failures of the complaint and the signal and insists for termination of the proceedings. In essence, L.Z.P. denies to have committed discrimination, denying that he has received phone calls requesting for delivery of urgent medical aid at the respective address before the phone call from Regional Police Office in town of M.

On the eligibility of proceedings:

The Commission has established that the proceeding is eligible and that there are no negative procedure provisions, impeding initiation and motion of the proceedings.

Grievances for inadmissibility of proceeding are unjustified due to following considerations:

The proceeding is initiated on a complaint No. 104 of 22.12.2005 and a signal for self-referral No. 75 of 24.01.2006. As evident from the complaint No. 104 of 22.12.2005, whose sender is identified as R.O.S. - M. Chaired by A.H.G., that it does not come from directly affected persons, in this case legal inheritor of V.G., and therefore does not consitute a complaint by virtue of Article 50, point 1 of PfDA but a signal by virtue of Article 50, point 3 of PfDA and consitutes viable reason for initiation of a proceeding for protection against discrimination. Lodging of signal does not require letter of attorney from the affected persons, since each physical or legal entity, state and municipal authorities, can approach the Commission for Protection against Discrimination through signal by virtue of Article 50, point 3 of PfDA. The grievance of L.P. representative that actions to approach the Commission for Protection against Discrimination by A.H.G. do not ensue legal provision for Association R.O.S. - M., since it was established after complaint lodging; it was filed with the respective register to Regional Court in the town of M. in February 2006. The Commission does not support those objections, since as evident from Record of 06.11.2005 (page 239 of the case file), the association has been found on the same date and A.G. is one of its founders; the association is filed with the Regional Court Register at the town of M. under Decision No. 1 of 09 February 2006 No. 00/0000, and by virtue of Article 6 Paragraph 2 of the Law on Legal Entities on Non-profit Making Basis; constituents' deeds performed on the NGO

behalf, borne rights and obligations for those who have performed them and are transferred over the non-profit organisation at the moment of its establishing, i.e. at association's entry in the register to Regional Court of M. Legal consequences of the Commission's referral, committed of A.H.G., have been transferred to the legal entity Association R.O.S. - M. .

The objections of L.P. procedure representative for termination of the the proceedings due to failure to produce evidence for court registration of the association and of declaration for lack of proceeding before Court on the same dispute are found to be unjustified, since the Commission through legal info program Ciela Info has ascertained association's legal status, and at the open hearing Association's Chairman A.G. has provided Court Decision for registration and Records from the Founding Meeting of the Association. As of the unproduced declaration for lack of proceeding before Court on the same dispute, the Commission considers that in this case failure to produce such declaration cannot result in proceeding's termination, since it was initiated and based on the signal for self-referral, i.e. on initiative of the Commission for Protection against Discrimination by virtue of Article 50, point 2 of PfDA and as the Commission has not laid a claim before Court, there couldn't be completely identical legal dispute due to lack of identity of the parties in court proceeding. In the course of investigation, a verification of District Prosecution Office in the town of M. Has been requested, to check if penal proceeding has been initiated on the same complaint, on which text of Penalty Code and against which persons.with letter, entered in CPD register under No. 000 of 31.03.2006. The District Prosecution Office town of M. has provided information that on the complaint, a check-up on the violation details has been made by virtue of Article 141, Paragraph 2 and Paragraph 1 of the Penal Code, and is initiated case file No. 0000/2005. The letter evidences that no legal proceeding on the Penal Procedure Code has been initiated; however, even if it was initiated later, it would be irrelevant, since the discrimination act and the infringement of Article 37 of PfDA as executed deed are not identical with the case for crime by virtue of Article 141, Paragraph 2 of the Penal Code and thus, the Commission considers that there are no provisions of Article 33 of the Administrative Violations and Sanctions Act that ordain termination of the administrative-penal proceeding to the Prosecution Office. completely inconsistent is the allegation of L.P. procedure representative that since the complaint of Association R.O.S. - M. to the Commission and the Prosecution Office with similar contents, therefore the proceedings before them are identical; that allegation is refuted by the evidence on the case file in above sense, which leads to the conclusion that there are no preconditions of Article 52, Para 2 of PfDA and therefore the proceedings before CPD shall not be terminated.

The Commission does not agree with L.P. grievance that the signal for self-referral is invalid and that it justifies termination of the proceedings before CPD, since the signal of Ass. Professor Blagoy Vidin, a CPD Member, was accompanied with evidence (excerpt of Trud newspaper), namely the circumstances grounding the signal and details covered in the newspaper article. The Commission is aware that no legal proceeding has been initiated at the Commission for Protection against Discrimination and thus, no declaration confirming those circumstances is needed. When allegation for identical legal dispute is made, that allegation should be proven by the party drawing rights and favourable consequences from those circumstances. The Specialized Permanent Sitting Panel has established that of Prof. Vidin's (a CPD Member) failure to produce declaration for lack of identical legal dispute is not a reason for termination of the proceedings before the CPD.

Based on the enclosed written evidences, explanations of the parties and evidences of inquired witnesses, the Commission established from factual and legal point of view the following:

L.Z.P. works as "medical doctor's assisant" at Urgent Medical Aid Center in the town of M. since January 1997 on Permanent labour contract No. II-036 dated 15.01.1997. To the

permanent labour contract, supplementary agreements have been contracted, that have not resulted in a change of his position. As evident from his job description that specifies his basic job functions as assistant medical staff at the Center for Urgent Medical Aid, i.e. the position "doctor's assisant" with basic task to provide urgent medical aid to population by time-schedule endorsed by the Director, receiving and recording details for the call, distributes the signal, provides adequate and timely information to the Paramedics teams, controls the Paramedics teams motion, keeps the documents. The labour contract of L.Z.P. has been terminated with Order No. II-159/27.12.2005 due to imposed disciplinary sanction – disciplinary dismissal for non-implementation of job duties and obligations during his night shift as an operator on duty in RCC on 15-16 December 2005. According to the employer, L.Z.P. has not entered V.G. relatives' first calls for urgent medical aid of in the Call Journal and thus, paramedics have not been sent to V.G. address in town of M., X neighborhood, X street, No. 00, and the call was assigned to the reanimation team on duty and recorded in the register only after the intervention of Regional Police Office in the town of M. According to explanations of Dr. S.Tz. – director of the Center for Urgent Medical Aid in the town of M. (page 21-22 of the case file), operator on duty in Center for Urgent Medical Aid in the town of M. in the nights of 15-16 December 2005, L.Z.P. has been doctor's assisant. That allegation has not been litigated by the parties in the proceedings.

A.V.S. lives in town of M., X neighborhood, X street, No. 00. the neighborhood is inhabited mostly Bulgarian citizens of Roma origin. A.V.S. came back from abroad on 12 December 2005. A.V.S. is son of V.G., with whom je lived in the house on abovementioned address. On 15.12.2005 according to witness A.V.S., there was a match between CSKS and Levski football teams and his father played cards with his friends. The witness A.V.S. was with his father untill 9 o'clock in the evening, then he retreated in his room together with his family. Later he went to bed, while his sister retreated in the kitchen. Around 3 A.M. the witness heard groaning and got up. His sister and his wife also woke up. The witness found his father V.G. on the threshold of his room, upper half of his body inside the room, while the other part laid in the corridor. At first, the witness thought that his father V.G. might have drank and felt sick, so he tried to lift him and put him to bed; when he tried to do so, however, he saw that his father was very pale and told his sister to call the Center for Urgent Medical Aid. The witness S. called his relatives and asked them for assistance. Two of his relatives came – his son-in-law J., the witness A.I., his cousin V. Then, the witness A.V.S. called line 150, the phone number of the Center for Urgent Medical Aid and asked an ambulance to be sent in X. neighborhood, X. street, No. 00, explaining that the case is very urgent and that his father is lying the floor motionless and that three years ago he got a heart attack. Male voice replied that in 3 o'clock after midnight he will not send paramedics and ambulance in X neighborhood. According to witness A.V.S. evidences, for 40 minutes his relatives continued to dial 150 from their mobile phones (J. and B. mobile phones). Several times no one answered at the Center for Urgent Medical Aid, once the connection was not good and no conversation was made, and to the phone calls made by J.Y., a male voice firmly refused to send an ambulance to the X. neighborhood in that hour. According to the witness A.V.S., operator was rude and vulgar, referring to Roma ethnic community. Similar are evidences of the lady witness A.N.; J.Y. and A.V.S. suggested to call police and seek their assistance in sending an ambulance and providing urgent medical aid to V.G. J.Y. called the police officer on duty at the Regional Police Office at the town of M. and asked him for help by sending an ambulance in X neighborhood, X street, No. 00. The witness B.L. sent the police patrol to complainants' address to check if there is someone needing urgent medical aid. The patrol on duty consisted of two police officers from the Regional Police Office in the town of M., R.K. and K.I., who after receiving a signal from around 3:20 A.M., visited that address in the town of M., X neighborhood, X street, No. 00, but did not find anyone lying on

the street. On that address there was an angry group of people, Bulgarians of Roma origin, who came out on the street and explained that a person has fainted. The witnesses K. and I. Were ushered inside and saw a man lying on an unhinged door, struggling for breath and panting. His relatives told witnesses K. and I. that they have called the Center for Urgent Medical Aid in the town of M. Several times, asking an ambulance to be sent for V.G. but got only refusals. One person who presented himself as J.Y., a son-in-law of V.G., told the witnesses K. and I. that he called at the Center for Urgent Medical Aid in the town of M., but the operator refused to send an ambulance, cursing and offending him for his Roma ethnic origin. Trying to convince witnesses in his words, J.Y. turned the speaker phone on and dialed 150. A free signal was heard, then male voice said, "Hallo?" J.Y. asked if that was the Center for Urgent Medical Aid and the voice in the other end replied, "Yes, this is the Center for Urgent Medical Aid, what can I do for you?". Y. said,"Please, send an ambulance in X quarter, X Street, there is a dying person". According to the witness K., the voice on the other end said, "Damned gypsies! We won't send you an ambulance!", while according to the witness I., the reply was, "Don't you understand that ambulance won't come? Dirty gypsies!" Witnesses K. and I. were shattered, while relatives' discontent and anger have been explicable. When witnesses K. and I. realized the urgency, they informing the police officer on duty at the Regional Police Office in the town of M. – the witness L., - who called the Center for Urgent Medical Aid via a special direct line and adviced for need of urgent medical aid for a person residing in X.

The signal received at the Regional Police Office at the town of M., requesting for urgent medical aid for person in X neighborhood, X Street is registered in the Call Register of the Center for Urgent Medical Aid in the town of M. in 3:42 o'clock on 16.12.2005 and L.P., operator on duty, assigned the signal to Paramedics team that arrived at the address in 20 minutes and transported the ill person to the Center for Urgent Medical Aid in the town of M. According to witness M.G. and the lady witness G.I., V.G. was still alive at the moment of Paramedics' arrival, they put him on a stretcher immediately and brought him at the ambulance, where the put an oxygen mask on his face. Then, he was transported immediately to the Center for Urgent Medical Aid in the town of M. The patient was received in 4.00 o'clock A.M. with stroke; at the CUMA, all necessary check-ups have been made, doctors from the cardiology, neurology and reanimation units have been consulted. Later, on 6.00 o'clock in the morning, V.G. has been received at the reanimation unit, where he died.

The witnesses M.G., I. and Il. said that freaquently, false signals are received at the Center for Urgent Medical Aid, by individuals who curse and hang the receiver. They also witnessed that in the period 15-16 December 2005 the computer system recording all phone calls of line 150 has not functioned properly for an year and therefore no phone calls have been recorded.

Based on the evidences of witnesses A.S., K.I., R.K., A.N., the Commission for Protection against Discrimination accepts that before the signal for need of medical aid, submitted by the Police Officer on duty, registered in the Calls Diary of Center for Urgent Medical Aid on 16.12.2005 in 3.42 A.M., there had been other calls for urgent medical aid at the same address, performed in the period 3 – 3:30 A.M. on 16.12.2005 of V.G. relatives, namely of A.S. and J.Y., that have not been logged at the Calls Log-Book of the Center for Urgent Medical Aid in the town of M. and are not assigned to the Paramedics. The evidences of witness M.G. that no other phone calls for urgent medical aid at that address have been received, aside from the signal sent by the Regional Police Officein the town of M., are not credired by the Commission, since there is contradiction in the witness G. Explanations – e.g. that he was not there when signal to the Regional Police Office at the town of M. was lodged, that he leaves the room from time to time, the litigation that he knew nothing, then stating that no other phone calls for that address have been received. Those calls have been made and

received at the Center for Urgent Medical Aid in the town of M. and nothing shows error connection to another Center for Urgent Medical Aid in another Bulgarian town. To those calls, the operator on duty at the Center for Urgent Medical Aid in the town of M. refused to send Paramedics, replied with curses referring to Roma, implying that he presumedly had guessed that the ill person and his relatives were Roma. The operator on duty has entered the call for urgent medical aid and has forwarded it to a medical team only after intervention of the Regional Police Office at the town of M. Since nothing proves that this is uniform approach of Center for Urgent Medical Aid in the town of M. to all individuals, the Commission considers that the failure to register calls for urgent medical aid made by deceased man's relatives and the failure to assign the signal to Paramedics without Police intervention consitute direct discrimination by virtue of Art.4 Para.2 of PfDA, since displays less favourable treatment on the ground of ethnic origin than other Bulgarian citizens are usually treated in comparatively similar circumstances, who receive urgent medical aid without Police assistance. Treatment in this case is less favourable, violating the right provided in Article 82, Paragraph 1, point 1 of the National Health Act and V.G. legal interest as Bulgarian citizen to obtain, even if he was not insured, medical aid in urgent cases. Urgent medical aid is a medical service that falls outside the scope of compulsory healthcare insurance and its delivery at less favourable conditions, in this case only after intervention of the Police, consitutes infringement of Article 37 of PfDA which is a particular case of direct discrimination. No evidence proving non-violation of the equal treatment principle by virtue of Article 9 of PfDA. Provisions by virtue of Article 7 of PfDA have not been found.

Committing discrimination consitutes an administrative violation by virtue of Article 78, Paragraph 1 of PfDA. The perpetrator of discriminatory act in this case is L.Z.P. who was operator on duty at the Center for Urgent Medical Aid in the town of M. in the night of 15-16.12.2005.

For infringement of Article 78, Paragraph 1 of PfDA, the legislator has stipulated administrative coercion "fine" amounting from BGN 250 to BGN 2000. Considering the provisions of Article 27 of the Administrative Violations and Sanctions Act, sanction is determined considering the burden of infringement, inducements for its committing, mitigating and aggravating circumstances and infringer's property status. In this case, the fact that P. labour contract has been terminated and there are no evidence for any incomes, a fine below the maximum amount of BGN 2000 shall be imposed. On the other hand, the infringement is very grave and with high degree of public danger, since affects public relations on citizens' health, an activity that by virtue of the Constitution of the Republic of Bulgaria and the National Health Act constitutes national priority and is guaranteed by the State. The Commission has established that a fine amounting to BGN 1000, an average amount by the provisions of Article 78, Para 1 of PfDA, shall warn and instruct the infringer to observe Article 4, Para 1 of PfDA, and shall warn and instruct the rest citizens.

The infringement is committed during implementation of the Center for Urgent Medical Aid in the town of M activities. Signal's author Association R.O.S. - M. and the Center for Urgent Medical Aid have signed an agreement by virtue of Article 62, Para 2 of PfDA, based on the equal treatment principle and prevention of discrimination. The produced agreement meets the requirements of Article 62, Para 2 of PfDA, thus is liable to CPD approval, while the proceedings against the Center for Urgent Medical Aid in the town of M. shall be terminated.

Considering above stated and by virtue of Article 65, 1-3 of PfDA, Article 62, Paragraph 2 and Paragraph 3 of PfDA, Article 47, point 1 and point 3 of PfDA and Article 78, Para 1 of PfDA, The Specialized Permanent Sitting Panel of the Commission for Protection against Discrimination,

DECIDED

ESTABLISHES in relations between Association R.O.S. - M., filed in the register to Regional Court in the town of M. with decision No. 00/0000, address town of M., X Str., represented by Chairman A.G.H., Center for Urgent Medical Aid in the town of M., represented by the Head S.Tz.Tz., L.Z.P., holder of ID No. 00000000 from the town of M., Str. "XX" No. 00 that on 16.12.2005 in town of M. L.Z.P. as an operator on duty at the Center for Urgent Medical Aid in the town of M. in the period 3:00 - 3:42 A.M., by failing to register and assign a requst of V.S.G. relatives for delivery of urgent medical aid to V.S.G. from the town of M., X neighborhood, X Street, and did so only after intervention of the Regional Police Office, has committed direct discrimination on the ground of ethnic origin against V.S.G., holder of ID No. 00000000, deceased on 16.12.2005, by refusing him urgent medical aid, delivering it at less favourable conditions and thus breaching the provisions of Article 4, Para 1 of PfDA and Article 37 of PfDA, committing administrative violation by virtue of Article 78, Para 1 of PfDA.

IMPOSES to L.Z.P.., holder of ID No. 00000000, from the town of M., XX Str., by virtue of Article 78, Para 1 of PfDA administrative coercion "a fine" amounting to BGN 1000 .

APPROVES the agreement contracted between Association R.O.S. - M. filed in the register to Regional Court at the town of M. with decision No. 00/0000 from the town of M., X Street, represented by Chairman A.G.H., and Center for Urgent Medical Aid in the town of M., represented by its Head S.T.T., agreement with the following text:

1. The parties on this agreement agree that all Bulgarian citizens have equal rights, access to urgent medical aid including and any differences by virtue of ethnic origin, denomination, social status, skin colour, political convictions, sexual orientation, etc., could not justify violations of their legal rights and interests.

2. The parties on this agreement agree that the four meetings held between them, dedicated on the health problems of K. neighborhood residents in the municipality M., have been useful for both parties and with this agreement agree that those meetings shall continue regularly, at least once every 45 days on request of any of the parties.

3. Meetings are open-ended and the parties are entitled to attract as participants other nongovernmental organizations, physical and legal entities, experts, state and municipal institutions in charge with healthcare in M. district.

4. The parties under agreement agree to work for prevention of incidents of possible discriminatory treatment, informing all employees at the Center for Urgent Medical Aid branches on the territory of M. with antidiscrimination normative acts.

TERMINATES the proceedings on the case file in regard with Center for Urgent Medical Aid - town of M.

Decision in the part that approves the agreement and terminates the proceedings against Center for Urgent Medical Aid in M., is not liable to appeal. The Decision in its rest part is liable to appeal through Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement to the parties.

15. Decision No. 44A of 16.10.2006 on case file No.15/2006 of the CPD First Specialized Permanent Panel[28]

Discrimination on the grounds of ethnic origin
Art. 4, Para 1 and Paragraph 3 in relation to § 1, point 8 of PfDA Supplementary Provisions
Art. 120 of the Energetics Act
Art. 28, Paragraph 5 and Paragraph 6, Article 29, Paragraph 1 of Regulation No. 6 of 09.06.2004 for incorporation of electric power producers and consumers to electricity transfer and distribution networks

Installing of electricity measurement appliances at height of 4.5 - 5 meters in Roma neighborhoods consitutes indirect discrimination on the ground of ethnic origin by virtue of Article 4, Para 3 of PfDA and infringement of Article 37 of PfDA Discrimination is indirect because the introduced seemingly neutral practice, even though justified with legitimate aim, relies on inappropriate and unnecessary means and puts persons of Roma origin in less favourable situation compared to other persons. Installing electricity measurement appliances at height of 4.5 - 5 meters in neighborhoods inhabited by Roma consitutes infringement of Article 37 of PfDA, since on that manner the defendant Company supplies and sells electric power to its Roma consumers at less favourable conditions compared to consumers of majority. The less favourable conditions of electric power supply is expressed in that the means for trade measurment are installed at height of 4.5 - 5 meters, not allowing visual control, compared to other consumers, whose measurement appliances are installed on the height of 1.40 - 1.60 meters.

The proceedings on the case file is initiated based on signal of G.G., municipal councilor in Municipal council town of L., lodged with the Commission for Protection against Discrimination under No. 120020206 and clarified with additional application (signal) No. 234A of 28.02.2006

The proceedings is by virtue of Section I of Chapter Four of the Protection from Discrimination Act (PfDA).

Signal's author allegess that in its activity of electric power distribution and supply XXXXX AD commits ethnic-based discrimination against Roma residents of the town of L., supplying electricity at less favourable conditions, since the electricity measurement appliances in the S. neighborhood in the town of L., inhabited mostly with Roma, are installed outside property borders on poles at height appr. 5 meters that makes impossible visual control over consumed electricity and family budget planning, while in the town other areas where Bulgarians reside, electricity measurement appliances are installed in consumers's homes or property borders at height 1.40 - 1.60 meters, allowing visual control over the consumed power. Allegedly, the infringement has started four years ago. The sender refers the Commission to establish infringement of Article 37 of PfDA and committed discrimination, to impose sanctions and to ordain termination of the infringement and to recommend electricity measurement appliances to be re-installed on height allowing visual control of the consumed electric power.

[28] The Decision is abrogated with Decision No. 10899 of 07.11.2007 under administrative file No. 5/2007 of the Surpreme Administrative Court, Fifth Unit, left in force with Decision No. 6238 of 28.05.2008 on administrative case No. 280/2008 of the Surpreme Administrative Court, Five-Member Panel - Second Chamber.

Grievances indicate as potential infringer XXXX AD, filed in the Commercial Register at P. Regional Court with decision No. 000/0000 from the town of P., X Str. as enterprise that allegedly has committed infringement; where the Company legal representatives I.S.S., A.A.D. and I.K., as Managing Board members constitute persons liable for administrative coercion by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act for potential infringements, committed during implementation of the Company activities. XXXX AD litigated that the reason to mount electricity measurement appliances at such height impeding the access to the "electrometers" is an attempt to guarantee citizens' safety, life and health, to prevent violations over the appliances, divergence of electric power, illegal joining to the Electricity Distribution Network and on-paying of consumed electricity.

The Commission has established the signal eligible considering its referral in due time by virtue of Article 52, Paragraph 1 of PfDA, since even if alleged breach has started four years ago, it continued at the moment of consideration of the signal. There are no negative procedure provisions, impeding initiation of the proceedings and consideration of the signal in essence.

Based on enclosed to the case file written evidences, parties' explanations heard at the open hearing, parties' written explanations and opinions, the Commission has established the following:

XXXX AD is a Company filed at the Commercial Register to P. Regional Court with decision No. 000/0000 address town of P., Str. "X" No. 0 and main activity: exploitation of Electricity Distribution Network and electricity supply to consumers connected to that network, on the territory oserviced by the enterpris, supply and sale of electric power to consumers connected to the Electricity Distribution Network, management, maintenance and development of distribution network. XXXX AD is governed by a Managing Board and is represented jointly by two Managing Board members - I.S.S., A.A.D. and I.K. The Company exercises its activity on the territory of town of L., where is manages and mainatns Electricity Distribution and Transmission Network, supplying and selling electric power. No other power supplier is found in the town of L. As evident from letter No. I-1138 dated 09.05.2006 of M. District Governor, filed with the Commission under No. 565 of 12.05.2006, attached to the considered case file, in L. there are three neighborhoods inhabited mostly by Bulgarian citizens of Roma origin, namely: S., H. and M. neighborhoods. As evident from letter No. 53-00-166 dated 05.03.2006 of the Mayor of L., entered with CPD under No. 535 of 09.05.2006, at the municipality register no neighborhood named "S" exists. However, as evident from the Records produced by the defendant, attached to Opinion No. 533 of 09.05.2006, part of L. territory is called S. neighborhood. The applicant alleged in S. neighborhood, i.e. area between streets "P.", "T.", "T.", "K.", "Y." "O.", "I.", "P.", "B.M.", "S.", "M." and "L." where reside mostly Bulgarian citizens of Roma origin. The territorial scope of the so-called S. neighborhood or that it is inhabited mostly with Roma is not litigated. As evident from the Records, public officials and electricity company representatives called X, M and S areas "the Roma neighborhoods". Residents' ethnic origin is well-known to the electricity company representatives who participated at those meetings with local governments, Police and Roma NGOs. On the other hand, statistic data from the last census confirm the allegation that S. neighborhood is inhabited mostly by Roma.

Parties do not argue the fact that electricity measurement appliances in the neighborhoods X. M and S are mounted on poles at height of 4.5 - 5 meters outside consumers' properties, as follows: in neighborhood X and M all electricity panels are mounted on poles at height of 4.5 - 5 meters, and in the S. neighborhood appr. 2% of the electricity measurement appliances are mounted on buildings facades at height 1.40 - 1.60 meters, 13% of the electricity measurement appliances are mounted on poles at height 1.40 -

1.60 meters, while 85% of the electricity measurement appliances are installed on poles at height of 4.5 - 5 meters. In the other pasrts of the town, electricity measurement appliances are installed on the buildings facades and on poles at height 1.40 - 1.60 meters. The parties do not argue that the height of 4.5 - 5 meters makes impossible consumers' visual control over the appliances, their family budget planning and control of their evidences. The other consumers, whose electricity measurement appliances are installed at height 1.40 - 1.60 meters, can control the electricity measurement appliances values. Comparison between the two groups of consumers implies that consumers, whose electricity measurement appliances are installed at height of 4.5 - 5 meters are put in less favourable situation compared to those, whose electricity measurement appliances are mounted at height 1.40 - 1.60 meters, since the first group cannot survey values, control the credibility of bills and plan power consummation at their households, while the second group can easily do that. The first group of consumers can control the electricity measurement appliances values only through a special equipment that the Company for Electricity Distribution shall provide within three days after an application has been filed by the consumer. In this case, the height of poles is the concrete ground for the less favourable situation. By virtue of Article 120 of the Electricity Act, consumed power is measured by appliances owned by the respective Company for Electricity Distribution and mounted next to or inside consumer's property border. Places for appliances' mounting are regulated with the provisions of Article 28, Paragraph 5 and Paragraph 6, Article 29, Paragraph 1 of Regulation No. 6 dated 09.06.2004 for producers' and consumers' connection to the transfer and electricity distribution networks. Those provisions stipulate the basic principle for electricity measurement appliances' mounting next or inside consumers' property borders without any requirements for height. However, even if there is no legally promulgated height for appliances' mounting, that constitutes inadmissibly different treatment of consumers. In this case, considering that electricity measurement appliances are mounted at height of 4.5 - 5 meters in the "Roma" neighborhoods X. M and S, obviously residents' ethnic origin is the main reason for the less favourable treatment.

The Defendant Company litigates that electricity measurement appliances in those regions are installed at larger height and impede access and prevent violations and to limit and prevent thefts of electric power, inlegal connection to the Electricity Distribution Network and to guarantee citizens' safety, life and health. The defendant argued that this practice was introduced because of inefficient penal proceedings for infringements by virtue of Article 216a of the Penal Code, Article 234v of the Penal Code and of the Administrative Penal proceedings on the Electricity Act; but since no evidence was produced that the measure is applied individually only against infringers and delinquent clients, its introduction in neighborhoods with Roma residents gives the impression that only Bulgarian citizens of Roma origin commit those illegal deeds or that all Roma steal electricity, discrediting regular consumers of Roma origin. Through those arguments, the Company for Electricity Distribution vindicates that the measure is neutral practice to terminate illegal violations on the electricity measurement appliances, divergence of electric power and illegal joining to the network. Even if the aim is to protect people's safety and health and to protect appliances and network from thefts, the means to achieve them (i.e. mounting electricity measurement appliances at height of 4.5 - 5 meters) are not appropriate or necessary. In this case, the means is not suitable for the aforementioned aims because the measure is applied not individually to certain delinquent clients but for the whole community. On the other hand, according to the Company procedure representative, as stated on the open hearing of 02.10.2006 – page 13, mounting of all electricity measurement appliances at height of 4.5 - 5 meters is inconvenient for collectors and consumers alike. The Specialized Permanent Sitting Panel considers that mounting of electricity measurement appliances at such height is not necessary, since the defending Company has not produced evidence proving that the only

technical solution to protect appliances and prevent electricity thefts and other infringements. Those conclusions have been made under the rule of shared burden of proof, stipulated in Article 9 of PfDA.

Therefore, the mounting of electricity measurement appliances at height of 4.5 - 5 meters in neighborhoods with Roma residents, consitutes indirect ethnic discrimination by virtue of Article 4, Para 3 of PfDA and infringement of Article 37 of PfDA. Discrimination is indirect because the introduced seemingly neutral practice, even though justified with legitimate aim, relies on inappropriate and unnecessary means and puts persons of Roma origin in less favourable situation compared to other persons. Installing electricity measurement appliances at height of 4.5 - 5 meters in neighborhoods inhabited by Roma consitutes infringement of Article 37 of PfDA, since on that manner the defendant Company supplies and sells electric power to its Roma consumers at less favourable conditions compared to consumers of majority. The less favourable conditions of electric power supply is expressed in that the means for trade measurment are installed at height of 4.5 - 5 meters, not allowing visual control, compared to other consumers, whose measurement appliances are installed on the height of 1.40 - 1.60 meters. Considering that appliances are mounted at the height of 4.5-5.00 meters only in neighborhoods with Roma residents, obviously the infringement by virtue of Article 37 of PfDA is committed on the ground of ethnic origin, since affected persons are of Roma origin.

Discrimination consitutes administrative violation by virtue of Article 78, Para 1 of PfDA, subjected to penalty fine from BGN 250 to 2000. The infringement is committed in implementation of XXXX AD activities and by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act the responsibility for the infringement falls in the managers who have omitted the infringement, in this case the three Managing omitted omitted who are legal representatives of the Company - namely I.S.S., A.A.D. and I.K. In this case, the Managing Board members are Company managers, considering the Managing Board powers by virtue of Article 241, Paragraph 1 of the Commercial Law and their rights and obligations by virtue of Article 237, Paragraph 1 of the Commercial Law. Considering the provisions of Article 27 of the Administrative Violations and Sanctions Act sanction is determined considering the burden of the infringement, inducements for its committing, mitigating and aggravating circumstances and property status of the infringer. In this case, the Commission considers that each legal representative of the Company shall be fined in maximum amount by Article 78, Para 1 of PfDA, since the infringement is very grave and only sanction in maximum amount would reach the aim for general prevention. The infringement is very grave since it has affected persons only in the S. neighborhood in the town of L. are over 6000 persons, on the other hand the measure is applied for whole neighborhoods inhabited by Roma, irrelevant of guilt, proved infringements and unverified breach by certain consumers.

The Commission has decided that in this case it shall ordain termination of the infringement, impose compulsory administrative measures - to refrain in future from committing similar infringements on the territory of all districts in the Republic of Bulgaria, where the Company for Electricity Distribution exercises its activity, i.e. electric power supply; prescribes measures for elimination of the infringement committed against consumers in L. and prevention of similar infringements in other settlements, falling in territory serviced by the defending Company, prescribing to Company officials and legal representatives to install electricity measurement appliances for all consumers at height of 1.40 - 1.60 meters, allowing visual control over them. Measures in implementation of this instruction shall be taken within one month of decision delivery, and the Company for Electricity Distribution by virtue of Art.67 Para.2 of PfDA shall inform in writing the Commission on the measures taken for each settlement in the districts supplied with electric power.

Considering above stated and by virtue of Article 65, point 1-4 of PfDA, Article 47, point 1-4 of PfDA, Article 76, Para 1, point 1 of PfDA and Article 78, Para 1 of PfDA, First Permanent Panel by virtue of Article 48, Paragraph 2, point 1 of the Protection against Discrimination Act of the Commission for Protection against Discrimination, specialized in discrimination on the ground of ethnic origin and race, has

D E C I D E D

ESTABLISHES that in the relations between G.G.N., municipal councilor at the Municipal council of the town of L., address: town of L., X Str. and XXXX AD, filed in the Commercial Register to P. Regional Court under decision No. 000/0000 address P., X Str., represented together by the Managing Board members I.S.S., A.A.D. and I.K., in the exercising of XXXX AD activity, by mounted electricity measurement appliances at height of 4.5 - 5 meters in S.neighborhood in the town of L., locked between streets "P.", "T.", "T.", "K.", "Y.", "O.", "I.", "P.", "B.M.", "S.P.", "M." and "L." , has committed indirect discrimination on the ground of ethnic origin, supplying electric power at less favourable conditions on ethnic ground, thus violating the provisions of Article 4, Para 3 of PfDA and Article 37 of PfDA and committing administrative violation under Article 78, Para 1 of PfDA.

IMPOSES to A.A.D., Identity number 00000000, from the city of S., Executive XXXX AD Director, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act an administrative coercion "fine" amounting to BGN 2000 (two thousand levs).

IMPOSES to I.S.S., Identity number 0000000000, from the city of S., member of XXXX AD Managing Board, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, an administrative coercion "fine" amounting to BGN 2000 (two thousand levs).

IMPOSES to I.K., citizen of CR, with ID No. 000000, member of XXXX AD Managing Board, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, an administrative coercion "fine" amounting to BGN 2000 (two thousand levs).

ORDAINS by virtue of Article 47, Para 2 of PfDA termination of the above established infringement.

IMPOSES to XXXX AD compulsory administrative measures by virtue of Article 76, Para 1, point 1 of PfDA, Recommending to the members of the Company Managing Board**:**

1. To refrain in future from similar infringements on the territory of all districts in the Republic of Bulgaria, where thr Company for Electricity Distribution exercises its activity and supplies electric power.
2. To re-mount all electricity measurement appliances at height of 1.40 - 1.60 meters, allowing visual control over their evidences.

DETERMINES by virtue of Article 67, Paragraph 2 of PfDA a period of 30 days, withinh which XXXX AD and Company Managing Board members shall inform in writing the Commission for Protection against Discrimination on the measures taken in implementation of abovementioned mandatory instructions.

Decision is liable to appeal through Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement.

Appeal of decision does not suspend the implementation of imposed compulsory administrative measures, namely the recommendations given with this decision.

16. Decision No. 58 of 29.11.2006 on case file No. 10/2006 of CPD First Specialized Permanent Panel [29]

Discrimination on the grounds of ethnic origin
Art. 4, Para 1 and Paragraph 3 in relation to § 1, point 8 of PfDA Supplementary Provisions
Art. 24, Paragraph 2 of the Administrative Violations and Sanctions Act
Art. 27 of the Administrative Violations and Sanctions Act

The limited power supply introduced by the Company for Electricity Distribution in segregated territory consitutes indirect ethnic-based discrimination against dutiful consumers by virtue of Article 4, Para 3 of PfDA and infringement of Article 37 of PfDA. Discrimination is indirect because the practice is seemingly neutral, justified with legitimate aim but the means are inappropriate and unnecessary. Meanwhile, that constitutes infringement of Article 37 of PfDA, since the defending Company supplies and sells electric power to dutiful consumers of the segregated territory at less favourable conditions. The less favourable delivery of electric power is failure of the Company to fulfill its obligations providing uninterrupted electric power supply.

The proceedings on the case file is initiated on signal of A Foundation, filed in the register of non-profit legal entities to the P. Regional Court with decision No. 0000/0000, town of P., X Street, represented by its Manager K.V.B., filed at the Commission for Protection against Discrimination under No. 56 of 30.11.2005

The proceeding is by virtue of Section I, Chapter Four of the Protection from Discrimination Act (PfDA).

Signal's author grieves that XXXX AD (currently XXXX AD) to implementation of its activity of distribution and electric power supply commits ethnic-based discrimination against Bulgarian citizens of Roma origin, residents of S. neighborhood in the town of P., inhabited mostly of Bulgarian citizens of Roma origin. The Company supplies electricity to its Roma consumers (dutiful clients who pay regularly their electricity bills) at less favourable conditions, introducing in 2002 limited power supply for that whole area, including to the correct consumers. In the rest part of the town, however, inhabited mostly by individuals of Bulgarian ethnic origin, for delinquent clients individual termination of electricity is applied. Signal's author refers the Commission to establish ethnic- or personal status-based discrimination in the introduced limited power supply, to impose the sanctions and compulsory administrative measures by virtue of PfDA, and to ordain termination of the infringement.

Grievances indicate as possible infringer XXXX AD, filed in Commercial Register to the Regional Court at P. with decision No. 0000/0000, address town of P., H.G.D. Street, which allegedlt has committed infringement while exercising activities, whereas the Company legal representatives V.H., M.Y.T. and S.S. as Company Managing Board members, and L.N.C. as procurator are the persons liable to administrative coercion by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act for potential infringements omitted during implementation of Company activities. XXXX AD did not litigate the introduction of limited electric power supply to consumers of the part locked

[29] The Decision was proclaimed insignificant with Decision No. 7811 of 19.07.2007 under administrative file No. 1048/2007 of the Surpreme Administrative Court, Fifth Unit, left in force with Decision No. 375 of 10.01.2008 under administrative file No. 10291/2007 of the Surpreme Administrative Court, Five-Member Panel - Second Chamber.

between the streets K, L, X, P and B and the fact that on the rest part of P., the power is cut off only to delinquent clients; however, the company objects against the alleged breach of equality principle. The defendant company litigates that the limited power supply has no relation to consumers' ethnic origin and states that consumers are not divided by their ethnic origin, race or other ground but on their correctness, i.e. those who pay their bills for consumed electricity in due time and delinquent ones who do not pay in time or do not pay at all the consumed electricity.

The Company procedure representatives objected against eligibility of the proceedings before Commission for Protection against Discrimination, producing arguments for inadmissibility in three directions – lack of clarity concerning the physical entity, against whom the established discrimination on the ground of ethnic origin has been committed, lack of procedure legitimacy of the applicant for participation at the proceedings before the Commission for Protection against Discrimination and presence of a pending identical legal dispute initiated before the Regional Court of Plovdiv, civic case file No. 0000/0000. Objections are laid in Section One of the application, lodged by lawyers representing the Company for Electricity Distribution, filed with the Commission for Protection against Discrimination under No. 408 of 12.04.2006. The Commission has established that objections for inadmissibility of the administrative proceeding are unjustified because:

Concerning objection for vagueness of the physical persons allegedly affected by the committed infringement of the Protection from Discrimination Act: XXXX AD litigates that the signal fails to indicate specific physical persons affected from the inequal treatment, which has hampered Company's effective defense. The Commission shall consider that objection inconsistent, because the signal clearly refers to possible discriminatory practice introduced and applied over a vast circle of persons (part of neighborhood in town of P.) with common traits, i.e. they identify themselves as Roma minority. The number of affected persons is not a constant, since the other common feature is that those persons are correct consumers and live in a segregated environment, separated from the other ethnic communities in P. To exemplify the discriminatory nature of that practice, signal's author compares situation to another group of correct consumers who are of Bulgarian ethnic origin, reside and consume electric power in the rest parts of P., who are not subjected to a similar collective measure of limited power supply due to third persons' delinquency. Therefore, the argument for lack of affected individuals' common features is ungrounded; furthermore, the alleged discriminatory practice affects not a single person but a vast circle of persons sharing several common grounds.

Concerning the objection for complainant's lack of procedure legitimacy to represent a party before the CPD:

The Commission does not support the Opinion of XXXX AD that the complainant cannot represent a party in the proceedings because does not meet the provisions of Article 3, Paragraph 2 of PfDA. The complainant is a Foundation, i.e. a legal entity, registered under the Law on Legal Entities on Non-profit Making Basis. The provisions of Article 3 of PfDA are material-legal and regulate the circle of entities protected against discrimination, i.e. physical persons, legal entities, the latter in occasions when they are discriminated on the grounds listed in PfDA, Article 4, Para 1, regarding their membership and persons. Procedure legal provisions are found in Chapter Four, Section I of the Protection from Discrimination Act. By virtue of Article 50 of PfDA there are three manners to initiate administrative proceeding for protection against discrimination before the Commission and they are: on complaint of affected persons, on initiative of the Commission, and on signals of physical and legal entities, state and municipal authorities. In the provisions of Article 50, point 1 of PfDA legislator has stipulated that the proceedings before the Commission start on initiative of the wronged party, which by virtue of Article 3 of PfDA can be a physical entity,

association of physical persons or legal entity. The text of Article 50, point 2 of PfDA covers the self-referral of CPD as an opportunity for initiate a proceeding. The provisions of Article 50, point 3 of PfDA settle cases when the proceedings before the Commission starts on signal lodhed by a physical and legal entities, state and municipal authorities, i.e. when physical persons or legal entities initiate proceeding before the Commission on their behalf for others' impaired rights and interests. Thus, Legislator has provided legal opportunity to persons who are not victims of a discriminatory act, to provoke initiation and development of administrative proceeding for protection against discrimination, in order to achieve adequate and effective protection against discrimination. Often, discrimination affects vast, even indefinite circle of persons, and the wronged person fears of unfavourable consequences and victimization, therefore is unable to undertake steps for protection against discrimination. To fulfil the major objective of PfDA - effective protection against discrimination, Article 2, point 3 and Article 51, Para 1 and Paragraph 2 of PfDA set similar requirements to the contents of complaints and signals. In both cases, regardless whether the initiative for initiation of administrative proceeding is undertaken by the wronged party or by third physical or legal entity that is not directly affected by the discriminatory act, the complaint or signal shall present the requests addressed to the Commission. since clearly formulated request is one of the key preconditions for eligibility of the signal; logically, a sender shall participate in the administrative proceeding with equal procedure rights like a complaint, i.e. to produce evidences, to litigate, to get familiar with collected evidence, to appeal Commission's decisions, etc. The opposite situation would have nullified the possibility persons who are not victim of discrimination to approach the administrative authority in promulgated in Article 50, point 3 of PfDA. On the other hand, the provisions of Article 50, point 3 and Article 51 of PfDA do not set a requirement for legal interest of the sender. The legal norms, stipulated in Section I, Chapter Four of PfDA, constitute special exception of the Administrative Procedure Code general rules. Requirement for sender's legal interest by virtue of Article 27, Paragraph 2, point 5 of the Administrative Procedure Code by virtue of Article 22, point 1, provision 2 do not apply to proceedings by virtue of PfDA Section I, Chapter Four, according to its special status. By virtue of Article 70, Paragraph 1 of PfDA, for matters not settled, the provisions of the Administrative Procedure Code shall apply, and as PfDA does not mention explicit legal provision indicating who are subjects or parties in the particular administrative proceeding, the provisions of Article 27, Paragraph 1 of the Administrative Procedure Code shall be applied, i.e. that the initiator immediately becomes a Party. The overview of applicable legal norms suggests that the author by virtue of Article 50, point 3 of PfDA is a Party in the administrative proceeding and has all procedure rights by virtue of Article 34 of the Administrative Procedure Code. Therefore, the Commission shall accept that Signal's author is legitimate Partyin the administrative proceeding before the CPD.

Concerning the objection for presence of identical pending legal dispute as a reason for termination of the proceedings before CPD:

On that issue, the Commission pronounced Decision No. 2 of 20.12.2005, delivered to the parties on 04.01.2006 evident from post delivery notice No.3 (page 18 of the case file) and post delivery notice No. 4 (page 23 of the case file). Considering the faiure to appeal the decision in legitimite deadline, the decision has entered into force on 19.01.2006. The Commission did not find a reason to reconsider the eforced administrative act - Decision No. 2 of 20.12.2005, since there is no objective and subjective similarity of the legal and the administrative dispute. As evident from the letter from P. Regional Court, lodged with CPD under No. 300 of 21.03.2006, and enclosed copy of judgement that has not entered into force

on case No. 000/0000 from the P. Regional Court Records (page 102-109 of the case file), and from the certificate issued by P. Regional Court on 21.10.2005 on case No. 0000/0000 (page 21 of the case file) that the claimant is the physical entity M.A.D. who is not a Party in the administrative proceeding. Claim's objective is, by virtue of Article 71 of PfDA, is to establish ethnic-based discrimination in the introduced limited power supply to claimant M.D. and to ordain termination of that infringement. Parties constituted under the administrative proceeding are the claimant and the defendant, Company for Electricity Distribution and its managers. The subjects participating at court and administrative proceedings are not identical. On the other hand, the two disputes are not identical either, since in the administrative proceeding, CPD is referred to establish discriminatory nature of the limited power supply imposed not over M.D. but over numerous Roma, i.e. many affected persons, to ordain termination of that practice in S. neighborhood in the town of P., and to impose respective sanctions. Therefore, the Commission considers that no reason by virtue of Article 52, Para 2 of PfDA, impeding the initiation and consideration of the signal in essence is found.

The Commission finds the signal eligible as it was referred in due time by virtue of Article 52, Paragraph 1 of PfDA, because even if the alleged infringement has started in 2002, it has continued by the moment of the signal's consideration.

Based on the enclosed written explanations, written evidences, verbal explanations of the parties, witnesses and external experts' opinions, the Commission has established the following:

XXXX AD is an enterprise filed in the Commercial Register to Plovdiv Regional Court with decision No. 0000/0000 address P., H.G. Street and main activity exploitation of Electricity Distribution Network for power supply, distribution of electric power to the consumers, management, maintenance and development of distribution network, uninterrupted and quality electricity. XXXX AD has a Managing Board, Monitoring Committee and Procurator and is represented by each two of its Board members or the procurist and one Board member. Board members are V.H., M.Y.T. and S.S., while L.N.T. is Company procurator. On the territory of town of P., Company exercises its activity managing the electricity distribution and transmission network, supplies and sells electric power. It is the only electricity supplier in the town of P. As evident from written explanations of the Board Mmber M.T., laid in the letter lodged with the CPD under No. 220 of 24.02.2006 (page 37-38 of the case file) and in letter No. 298 of 21.03.2006 (page 96-98 of the case file) evidencing that on the whole territory of P., except for one part of S. neighborhood, individual termination of power supply is applied to delinquent clients. As stated, the limited electricity supply has been imposed in the part of S. neighborhood locked between the streets K., L., H., P. and B.. The limited power supply is not an objective fact but has been imposed by the Company management as a counter-measure to individual power termination inefficiency, unpaid bills, low collectability, bad infrastructure, violations over the measurment appliances, lack of consumer culture and systematic failure to pay consumed electricity. The power is cut off during the daytime hours and restored in the dark hours in S. neighborhood. In the explanations, M.T. states that clients are divide not by ethnic origin but by dutifulness and correctness. The Company managers acknowledge that part of the dutiful consumers in S. are subjected to limited power supply but not because of their ethnic origin, since the Company did not collect data on consumers' ethnic origin but due to technical incapacity for uninterrupted power supply to dutiful consumers and limited power supply to delinquent consumers in that part of the neighborhood. On page 97 of the case file, point 2 and point 6 of the summary, contradictions have been found in statements on presumably unknown consumers' ethnic origin: in point 2, it is litigated that 52 correct consumers of Roma origin are subjected to limited power supply due to technical incapacity, which

nullified the credibility of litigation in point 6 that the Company does not collect statistical data on consumers' ethnic origin or ratio between various ethnic groups residing in the area located between the streets K., L., H., P. and B. Judging from the written explanations of M.D. (page 99-100 of the case file) and of R.R. (page 120 of the case file), the part of S. neighborhood where limited power supply regime is applied, excludes K., V., S. and S. Streets and that the limited power supply is applied only on that part of the neighborhood inhabited mostly by Bulgarian citizens of Roma and Turkish ethnic origin, while in the rest part of the neighborhood and in other regions of the town of P., inhabited mostly with individuals of Bulgarian ethnic origin, power is cut off only to delinquent consumers. It is also stated that for the residents of buildings on K. street in the same neighborhood, who are mostly of Bulgarian ethnic origin, power is cut off only to delinquent clients. According to the independent expert E.P. (pages 176-178 and pages 264-266 of the case file), from February 2003, on part of S., regime of limited power supply has been imposed, providing power only during the dark hours and cutting it off in the daytime. The cutting off and restoring is done remotely at the Control Center of the Company for Electricity Distribution. In result, Company dutiful consumers are not supplied with regular electric power. The part of S. neighborhood where the electricity regime has been applied, is located between streets K., L., H., P. and B., inhabited mostly of Roma residents. The opinion of the independent expert is grounded on statistical data from the Census in 2001 on his own investigation, in line with the collected written explanations of M.D. (pages 99-100 of the case file), R.R. (page 120 of the case file). Those evidence imply that the limited power supply regime is not applied over the rest part of "S." or on other parts of the town. Judging from the analysis of the independent expert P., presented at the open hearing, and from the witnesses' interrogation at the open hearing on 03.07.2006, it was established that the region subjected to limited power supply, i.e. between streets K., L., H., P. and B. in S. neighborhood in the town of P., is inhabited mostly with Bulgarian citizens of Roma or Turkish ethnic origin, backed by the witness K. that there is a language barrier between the Bulgarian collectors and the consumers. In the rest part of "S.", residents are mixed, half of them ethnic Bulgarians, the rest of Roma and Turkish ethnic origin. There, limited power supply regime is not applied. Witnesses summoned by the defendant Company give cautious and sparing replies concerning consumers' ethnicity in the area with limited power supply, stressing that the area is different from the rest part of S., with "specific" infrastructure and requires "speicifc" communication with consumers. The witnesses summoned by the complainant allegate that in the part of "S." where limited power supply is applied, is populated by Roma and Turks, whereas the rest part of the neighborhood, inhabited with mixed residents (Bulgarians, Roma, and Turks), is provided with regular power supply and power is cut off only to delinquent clients. Cosidering the legal relations between the defendant and his witnesses and considering heir hesitant replies concerning consumers' ethnicity, a certain degree of biasedness can be presumed. The evidences of D. and R., however, supported by the analysis and opinion of the independent expert at the open hearing on 03.07.2006, imply that the area between streets K., L., H., P. and B. in S. is inhabited mostly by people of ethnic minority origin (Roma and Turks), while rest part of the neighborhood is inhabited by mixed residents (Bulgarians, Roma and Turks). The section of "S." neighborhood between the streets K., L., H., P. and B., considering that they are inhabited mosty by Roma and Turks, and only a few Bulgarians, imposes the assumption for racial segregation of Roma and Turks by virtue of § 1, point 6 of PfDA Supplementary Provisions by segregating parts of the neighborhood on the ground of ethnic origin. That segregation on the ground of ethnic origin is a fact. It is not disputed that the part between the streets K., L., H., P. and B. of neighborhood S. is segregated territory on the ground of ethnic origin, limited power supply has been imposed, while in the rest part of that neighborhood and in the other parts of town of P. that are not

racially segregated territories, such a regime has not been introduced and uninterrupted electric power supply for dutiful consumers is ensured, while electricity is cut off to delinquent clients only, according to the General Provisions of the agreement for electric power supply. Besides the regime of limited power supply is applied in that part of neighborhood "S." against all consumers heedless if they are correct or delinquent consumers and at present, 52 correct consumers from the segregated territory have been subjected to such regime placing them in less favourable situation compared to dutiful consumers of regions and ethically mixed neighborhoods or with prevalent Bulgarian inhabitants. Their situation as dutiful clients from S. turns to be less favourable, since regardless their correctness, the Company for Electricity Distribution does not supply them with uninterrupted electricity (key obligation by virtue of Article 3, Paragraph 1, point 2 of the ToR for power supply contracts), breaching their legal rights and interests under the agreement for electricity supply. Obviously, if a dutiful consumer of Roma or Turkish ethnic origin leaves the segregated part of "S." and moves to another area, he won't be subjected to limited power supply. Logically, if a Bulgarian moves to S. and consumes power in the segregated part of the neighborhood, he could be subjected to the limited power supply. Therefore, the introduction of limited power supply results from the segregation in S. neighborhood. Indirect proof to that end is the statement of Defendant's procedure representative, lawyer L., at the open hearing on 03.07.2006: "This is not a problem in my neighborhood. It depends on the neighborhood." (page 411 of the case file). On the other hand, the ethnic segregation suggests inhabitants' Roma and Turkish ethnic origin. The concept "on the grounds by virtue of Article 4, Para 1", set as criterion to define inequal treatment as direct or indirect discrimination in the provisions of Article 4, Para 2 and Article 4, Para 3 of PfDA, in conxunction with § 1, point 8 of PfDA Supplementary Provisions means factual, past, present and also presumed presence of grounds by virtue of Article 4, Para 1 ib the discriminated person. In this case, the Commission established presence of a justified assumption for consumers' ethnic origin in the segregated part of neighborhood "S." and therefore accepted that the limited power supply was ethnic-based.

The defending Company for Electricity Distribution litigates attempts to justify the introduced regime of consumers' ethnic origin in that part of S. quarter, alleging that the introduced regime is ethnically neutral and conditioned by consumers' dutifulness or incorrectness. Undoubtedly, the regime is not a single action but a practice, which the defending Company justifies with the following arguments: huge old debts, low collectability, bad infrastructure, lack of technical equipment for provision of uninterrupted electricity supply to dutiful consumers and application of limited power supply for delinquent clients. The failure to pay consumed electric power results in losses for the Company, that reflect on the price of electricity and thus, the regime aims to limit the losses, persecuting a legitimate aim, but the limited power supply as means for accomplishment of that aim is not appropriate and necessary, since it breaches the correct consumers' lawful rights to uninterrupted electricity supply supply.

Above stated imposes conclusion that the limited power supply in a segregated territory consitutes indirect discrimination over the dutiful consumers of electricity on the ground of ethnic origin by virtue of Article 4, Para 3, PfDA and infringement of Article 37 of PfDA. The discrimination is indirect because has introduced seemingly neutral practice, based on a legitimate aim, but te means are inappropriate and unnecessary. In the same time, there is also an infringement of Article 37 of PfDA, since the defendant company supplies and sells electric power to consumers of the segregated territory at less favourable conditions. The less favourable conditions in supply of electric power constitutes of Company's failure to provide quality uninterrupted electric power supply to dutiful consumers.

The discriminatory deed consitutes administrative violation by virtue of Article 78, Para 1 of PfDA, infringement that shall be sanctioned with a fine between BGN 250 and BGN 2000. The infringement was committed while executing XXXX AD activities and by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, liability falls on company managers who have omitted that infringement, i.e. the Managing Board members and the procurist, who are legal representatives of the Company - namely: V.H., M.Y.T. holder of ID No. 00000000, and S.S., as Company Board members, and L.N.T.-V. In this case, the Managing Board members are company managers considering the Managing Board powers by virtue of Article 241, Paragraph 1 of the Commercial Law and their rights and obligations by virtue of Article 237, Paragraph 1 of the Commercial Law. The procurist has similar responsibilities resulting from his powers by virtue of Article 22 of the Commercial Law. By virtue of Article 27 of the Administrative Violations and Sanctions Act, sanction is determined considering the burden of infringement, inducements for its committing, mitigating and aggravating circumstances and property status of the infringer. In this case, the Commission considers that each legal representative shall be fined in the maximum amount, by virtue of Article 78, Para 1 of PfDA, since the infringement is very grave and only sanction in maximum amount would fulfil the aim of general prevention and act dissuading. The infringement is considered very grave, because the affected persons are compelled to live under unbearable circumstances and humiliation. The limited power supply was applied over the whole territory of S., regardless fault or correctness of consumers. On the other hand, the Company Managing Board members and the procurist, although informed for the launched proceeding in implementation of their administrative liability under Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, have not expressed their personal opinion on alleged infringement, nor on the administrative sanction amount. No evidence, nor arguments have been produced in relation to property and family status, acting as mitigating circumstances decreasing the fine's amount. As of the second procurist Y.Z., since he has not been informed for the proceedings and has not been summoned at open hearing of the Commission, he is not under administrative liability by virtue of Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act.

The Commission shall ordain termination of the infringement and shall impose the compulsory administrative measure "refraining in future from similar infringements on those districts oe territory of the Republic of Bulgaria where the Company for Electricity Distribution exercises its activity and supplies electric power, and shall prescribe termination of the infringement and prevention of similar infringements in other settlements serviced by the defendant Company, prescribing to the Company officials and legal representatives to provide uninterrupted electricity supply to all correct consumers heedless of their ethnic origin. Measures in implementation of the instruction shall be taken within one month of decision delivery, and within that deadline the Company, by virtue of Article 67, Paragraph 2 of PfDA, shall report to the Commission in writing on the measures taken in implementation of the imposed compulsory administrative measures.

Considering the above stated and by virtue of Article 65, point 1-4 of PfDA, Article 47, point 1-4 of PfDA, Article 76, Para 1, point 1 of PfDA and Article 78, Para 1 of PfDA, CPD First Permanent Sitting Panel specialized in discrimination on the ground of ethnic origin and race by virtue of Article 48, Paragraph 2, point 1 of the Protection against Discrimination Act,

D E C I D E D

ESTABLISHES on the dispute between A Foundation listed in the register of Non-profit Legal Entities to the P. Regional Court under decision No. 0000/0000, address town of

P., X Street, represented by its Chair K.V.B., ID 0000000000 and XXXX AD, listed in the Commercial Register to the P. Regional Court under decision No. 0000/0000, address town of P., X Street, represented by the Company Board members – V.H., M.Y.T. holder of ID No. 00000000, and S.S., and the procurist L.N.T.-V. with ID No. 0000000000, that the imposed limited power supply over segregated part of S. neighborhood in the town of P. consitutes indirect ethnic-basd discrimination against Company dutiful clients, breaching the provisions of Article 4, Para 3 of PfDA and Article 37 of PfDA and constituting administrative violation by virtue of Article 78, Para 1 of PfDA.

IMPOSES to M.Y.T. holder of ID No. 00000000, from the town of P., member of XXXX AD Managing Board, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act administrative coercion a fine amounting to BGN 2000 (two thousand levs).

IMPOSES to L.N.T.-V. holder of ID No. 00000000, from the town of P., procurator of XXXX AD, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act administrative coercion a fine amounting to BGN 2000 (two thousand levs).

IMPOSES to V.H., Austrian citizen, ID No. 000000000 of 00.00.0000, member of XXXX AD Managing Board, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act an administrative coercion – a fine, - amounting to BGN 2000 (two thousand levs).

IMPOSES to S.S., Austrian citizen, ID No. 000000000 of 00.00.0000, member of XXXX AD Managing Board, by virtue of Article 78, Para 1 of PfDA in conjunction to Article 24, Paragraph 2 of the Administrative Violations and Sanctions Act, an administrative coercion "fine" amounting to BGN 2000 (two thousand levs).

ORDAINS by virtue of Article 47, Para 2 of PfDA termination of the above established infringement.

IMPOSES to XXXX AD compulsory administrative measures by virtue of Article 76, Para 1, point 1 of PfDA, and Recommends to Company Managing Board members and procurist:

1. to refrain in future from similar infringements on the territory of all regions of the Republic of Bulgaria, where Company for Electricity Distribution exercises its activity and supplies electric power.

2. to provide uninterrupted electricity supply supply to its dutiful consumers heedless of their actual or presumed ethnic origin.

DETERMINES by virtue of Article 67, Paragraph 2 of PfDA period of 30 days of decision's delivery to XXXX AD, Company Managing Board members and the procurist, for written notification of the Commission for Protection against Discrimination on the measures taken in implementation of the above cited mandatory instructions.

The imposed fines shall be transferred to a bank account of the Commission for Protection against Discrimination at the Bulgarian National Bank, SWIFT CODE ZZZZZ, IBAN - XXX23 YYYY 0000 0000 0000 00.

The Decision can be appealed through the Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement.

Appeal of decision does not suspend the implementation of imposed compulsory administrative measures, namely the recommendations given with this decision.

17. Decision No. 9 dated 21.02.2007 on case file No. 91/2006 of the CPD First Specialized Permanent Panel[30]

Discrimination on the ground of ethnic origin
Art. 4, Para 2 in conjunction to § 1, point 8 , Article 9, Article 76, Para 1, point 1 in conjunction to Article 47, Para 2 of PfDA

Alleged violation: The person signaling raises the grievance that citizens of Roma origin are not admitted to court buildings only by showing their identity cards, like other Bulgarian citizens but they are required to show a summon to participate in a court session.

Non-admission of persons of Roma origin in the Court building consitutes less favourable treatment compared to the admission regime for non-Roma persons. The less favourable treatment in this case is expressed as non-admission of citizens of Roma origin in the Court building under the pretext that they don't have subpoenas, directly breaching their civil right to attend penal case open hearings. The non-admission of Roma is unlawful, since it breaches the equal treatment principle, prohibition of discrimination and the provisions of Article 14, Paragraph 1, point 6 and Article 2, point 4 of Regulation No. 1 dated January 30, 2003 on the Structure, organization and activities of the Judiciary Security System, settling the permit of individuals in the Court building. Considering the provisions of Article 9 of PfDA on sharing the burden of proof, defendant's litigation for lack of infringement is unjustified and unproven.

Case file proceeding is initiated upon a signal lodged by XXXX Foundation, registered legal non-profit entity at P. Regional Court with Decision No. 0000/0000, located at town of P., XX Str., represented by its President K.V.B., filed under No. 00000000 of the Commission for Protection against Discrimination register.

The proceedings is by virtue of Section I of Chapter IV of the Protection from Discrimination Act (PfDA).

Signal's author alleges that in the court building in town of P. to implementation of the admission regime with established practice of DG Security officers to General directorate "Security" of Ministry of Justice, i.e. non-admission of individuals of Roma ethnic origin in the court building when they present their ID cards, since officers requested a subpoena showing that they have been summoned to the respective legal proceeding. It is alleged that at failiure to present subpoenas, those persons are sent away. Grievances are that such non-admission in the court building constitutes discrimination on the ground of ethnic origin, since citizens of Roma ethnic origin are not allowed in the court building when showing only their ID card compared to majority citizens who are permitted when showing only their ID card, without request for subpoena. The signal describes several similar cases where DG Security officers ask citizens of Roma origin to present subpoenas to let them in the court building. Signal's author asks the Commission for Protection against Discrimination to establish that non-admission of persons of Roma origin M.K., A.M., S.U. and M.S. on 23.02.2006 in the court building in town of P. consitutes discrimination on the grounds of ethnic origin. Signal's author insists the sanctions provided in PfDA to be imposed, i.e. compulsory administrative measures, refraining from similar infringements of the antidiscrimination legislation in future to be ordained.

Allegations indicate as possible infringer the Minister of Justice and its subordinated Ministry of Justice of the Republic of Bulgaria, since factual actions reported by the

[30] The Decision has entered into force.

applicant, have been performed by the administration that in this case is a legal entity – Ministry of Justice – and assists the central body of executive power – in this case, the Minister of Justice. The Minister of Justice rules, coordinates and monitors the implementation of state policy according to his powers by virtue of Article 5 of Rules of Organization and Operation of the Ministry of Justice, among them the Judiciary security system. By Decision of XL National Assembly of the Republic of Bulgaria of 16.08.2005, promulgated in SG, issue 68/2005, G.P.P. has been elected for Minister of Justice.

As a Minister of Justice and representing the Ministry of Justice as a legal entity, G.P.P. litigated the signal with motives that enclosed to the signal evidence and collected evidence in the course of investigation have not established a permanent practice of DG Security in the town of P. for refused access to persons of Roma ethnic origin in the court building. Hisprocedure representative litigated that on the first described occasion, citizens who were unaware of admission regime at the Court building, have been embarrassed and did not insist to be let inside, while in the second occasion, citizens have been admitted after their lawyer appeared although they did not present subpoenas.

The Commission has established the signal eligible considering referral of the administrative authority in due time by virtue of Article 52, Paragraph 1 of PfDA and lack of negative preconditions by virtue of Article 52, Paragraph 2 and Paragraph 3 of PfDA for initiation and motion of the case file.

Based on written explanations, written and vocal evidences, heard at the public hearing explanations of the parties, witnesses and the video film "Justice for Everyone", part II, the Commission has established that:

With Decision XL NS of the Republic of Bulgaria dated 16.08.2005, promulgated in SG, issue 68/2005, G.P.P. was elected for Minister of Justice. By virtue of Article 25, the Minister is central body of the executive power with special competence and manages the Ministry of Justice. The Minister governs, coordinates and controls the implementation of state policy according to his powers (Art. 25, Paragraph 2 of the Administration Act) and governs his subordinated administration (Art. 3 of the Administration Act). By virtue of Article 42, the Ministry is administration facilitating Minister's activities' the Ministry is legal entity financed from the State budget, governed by the Minister. In this case, signal concerns the specific competence to the Minister of Justice, established in Article 5, point 19 of Rules of Organization and Operation of the Ministry of Justice on implementation activity of Judiciary security. That competence is exercised by the Minister through specialized administration DG Security and Security Units that by virtue of Article 30, Paragraph 1, point 1 and point 2 of the Rules of Organization and Operation of the Ministry of Justice organize and implement the security of all court buildings, ensuring order in the court buildings and security of Judiciary in the implementation of their powers. In implementation of his duties and obligations by virtue of Article 36e, Paragraph 4 of the Judiciary Act, the Minister of Justice has irdained Regulation No. 1 dated 30.01.2003 for the structure, organization and activities of the Security of Judiciary, regulating the functions of Judiciary Guards, including subjects who may access court buildings and the order to verify their identity. By virtue of Article 14, Paragraph 1, point 6 of the Regulation, persons are allowed into court buildings after ID cards and pass check-up (Art. 14, Paragraph 2, point 4 of the Regulation).

In open hearing of 22.01.2007, the Commission for Protection against Discrimination heard witness evidences of M.N.K., A.N.M., S.T.Y., M.Z.S., P.N.B., T.J.K. and J.I.B.

The investigation established that the witnesses P.N.B., T.J.K., J.I.B. are officers of Judiciary Security Unit, town of P. In February 2006 they have been on duty and guarded the security of Court building in town of P. and were in charge with the admission regime in the building. The witnesses M.N.K., A.N.M., S.T.Y., M.Z.S. allege that they are volunteers of P.

Foundation and in February 2006 found that the so-called "bankers' case" was to be heard at the Court of Justice and decided to attend the court hearing. Witnesses do not remember the exact date when the event has occurred but are certain that it has happened in February 2006, around 20th page 13, paragraph one of Record dated 22.01.2007). They decided to attend the court proceeding held at the Court of Justice in town of P. At the entrance, the witnesses explained that they wanted to attend the hearing and the officer on duty asked them if they have subpoenas. The witnesses replied that they did not have subpoenas. Meanwhile, an older lady passed by them and was let freely in the Court building. The officer on duty asked them what would they do at the court hearing and the witnesses explained that they wanted to hear and see the case. At the same entrance there was also a lady officer too. She asked the witnesses if they had ID cards and they replied positively. In the same time, other individuals have been waiting to be let in the court building and the the officer on duty asked witnesses to remove from the entrance and did not let them enter, requesting them to leave without checking their ID cards for verification. Meanwhile, those same officers let in the court building other persons - several ladies, apparently from Bulgarian origin. Inquired witnesses identify themselves as Bulgarian citizens of Roma ethnic origin and allege that those ladies of Bulgarian origin, as apparent from their features (page 11 of the Record dated 22.01.2007), have been let in the court after showing their ID cards, without requested subpoenas. In that situation, witnesses left the Court of Justice, offended from guards' attitude. According to evidences of A.M., while going out they were met by a BTV crew that were interested in the event. Witnesses showed their ID cards to reporters and expressed how they felt regarding their non-admission in Court building. Reporters shot a TV coverage of the event.

Inquired witnesses P.N.B., T.J.K., J.I.B., Security guards of Court building in the town of P. Told that on 23.02.2006 they have been in charge of the admission regime to the Court of Justice, on both entrances, but they do not remember anything special during their duty, namely refusal of admittance of persons who have shown requested documents – ID card for citizens, subpoenas for case participants, lawyers' cards for lawyers. Evidences of the witness P.B. confirm that on 23.02.2006 the "bankers' case" was heard, raising huge media and public interest (page 21 of CPD Record dated 22.01.2007). According to those witnesses' evidences, no infringements of the admission regime in the Court building have been established. The witnesses explains that each visitor is obliged to show subpoena and ID card. According to evidences, subpoenas are needed to direct the persons to respective court hall.

The Specialized Permanent Sitting Panel and Parties on the case file have watched a video clip presented on the case file hearing – the coverage "Justice for All", part II, requested from the XXX syudio – town of P. The coverage confirmed facts presented by witnesses M.N.K., A.N.M., S.T.Y., M.Z.S. concerning their non-admission in the court building and admission of other persons.

Based on presented evidence, the Commission accepts that Security officers to the Ministry of Justice have committed direct discrimination on the ground of ethnic origin by virtue of Article 4, Para 2 of PfDA against witnesses M.N.K., A.N.M., S.T.Y., M.Z.S., requesting them to present subpoenas as precondition for their admission to the Court of Justice, in order to attend the public hearing of the penal case. That conclusion is justified with the following facts. At the Court of Justice entrance, Security officers have asked M.N.K., A.N.M, S.T.Y., M.Z.S. to show their subpoenas as proof for admission in the building. The witnesses explained that they did not have subpoenas but they wanted to attend an open hearing of penal case. Those persons, summoned at the Commission open hearing, identified themselves as Bulgarian citizens of Roma ethnic origin. One of the Court Security officers asked witnesses if they had ID cards and they confirmed it. However, the Court Security Officers did not ask them to show their identity cards for check-up but told them to

pull aside, since they hampered control and admission in the Court building of the rest people. In fact, those who were not admitted to the Court building, have been the complainants. Meanwhile, other people who were not Roma, have been let freely inside the Court building, after a mere ID check-up. In this case, non-admission of Roma in the Court building consitutes less favourable treatment compared to treatment and admission regime of non-Roma persons. The less favourable treatment in this case has been expressed as non-admission of Roma to the Court building, under pretext that they don't have subpoenas and although their right to attend open hearing of penal case has been breached directly. Non-admission of Roma persons is unlawful because it violates the equal treatment principle, discrimination prohibition and the provisions of Article 14, Paragraph 1, point 6 and Article 2, point 4 of Regulation No. 1 of 30.01.2003 for Structure, Organization and Activities of Court security and Admission in Court premises. As evident of letters, registered under No. 1400 of 09.10.2006, No. 1425 of 11.10.2006, No. 1441 of 13.10.2006, with explanations of District Court Chairman at the town of P., individual passes for entry in the Court of Justice at the town of P. have not been introduced; by virtue of Article 14, Paragraph 1, point 6 of Regulation No. 1 of 30.01.2003 for the Structure, organization and activities of the Judiciary Security System, whose officers are the witnesses inquired before the CPD, citizens shall be ushered at the Court building after ID card check. Therefore, subpoena is not necessary for admission of persons in the Court building.

In the written explanations to the Minister of Justice, lodged with the Commission for Protection against Discrimination under No. 1664 of 07.11.2006, it is litigated that in implementation of the admission regime at Court building in the town of P., problems with the admission of persons who fail to produce subpoenas has occurred. As evident from the explanations, in the two occasions described in in the signal, Order of the Minister of Justice has been issued and DG Security Unit officers at the town of P. Were instructed to admit at the Court building persons without subpoenas, after identity check. For the incident in February 2006, the Minister of Justice litigated that by officres-on-duty reports, no incident in the implementation of admission regime has been recorded. The explanation is supported by Memo of the DG Security Unit officers, inquired before the CPD. The Memos date of October 2006, 8 months after the incident and do not contradict and or controvert the evidences of M.N.K., A.N.M., S.T.Y., M.Z.S. In those written explanations, the Minister of Justice litigates the allegations for presence of permanent practice for different treatment of citizens of Roma ethnic origin.

As evident from presented list registered under No. 182 of 22.01.2007 in open hearing written evidences of procedure representative principle the Minister of Justice that G.C. and M.B. have referred the Minister for another similar case when persons of Roma ethnic origin have been asked to show subpoenas. The Procedure Representative of the Minister of Justice has provided the Commission with memos No. 162/2006 of P.B. and No. 162/2006 of N.M. The memos show that DG Security Unit officers have requested subpoenas in addition to the ID cards from presumably Roma individuals, judging from their features.

With opinion filed at the Commission under No. 391 of 07.02.2007, the procedure representative principle the Ministry of Justice litigate grievances in the signal, alleging that there is no discriminatory practice against Bulgarian citizens of Roma origin to implementation of the admission regime in the Court building in the town of P.

The Commission, considering the provisions of Article 9 of PfDA on shared burden of proof, accepts that the litigation for non-infringement of the equal treatment principle is unjustified.

Considering all stated above, the Commission for Protection against Discrimination finds that in implementation of the admission regime in Court building at the town of P., on 23.02.2006 direct discrimination on the ground of ethnic origin has been committed against

M.N.K., A.N.M., S.T.Y., M.Z.S., by the requirement for subpoenas by virtue of Article 14, Paragraph 1, point 6 and Paragraph 2, point 4 of Regulation No. 1 of 30.01.2003 for the Structure, organization and activities of the Judiciary Security that have resulted in non-admission of those persons in the court building.

The Commission has established that in this case termination of the infringement shall be ordained and coercive administrative measures shall be imposed – refraining in future of similar infringement in all DG Security Unit of the Ministry of Justice, and measures to eliminate the infringement and prevent similar infringements shall be to prescribed to all DG Security Unit of the Ministry of Justice, with written notice to all DG Security officers to apply the admission regime in court buildings in uniform way, heedless of visitors' ethnic origin. Measures in implementation of this instruction shall be taken within one month of decision delivery, and by virtue of Article 67, Paragraph 2 of PfDA, the Minister of Justice shall deliver a written report to the Commission on the measures taken in implementation of the compulsory administrative measures.

Considering above stated and by virtue of Article 65, point 1, point 2 and point 4 of PfDA, Article 47, point 1-4 of PfDA, Article 76, Para 1, point 1 of PfDA, First Permanent Panel by virtue of Article 48, Paragraph 2, point 1 of PfDA of the Commission for Protection against Discrimination, specialized in discrimination affairs on the ground of ethnic origin and race,

DECIDED

ESTABLISHES on the signal of XXXX Foundation, listed in the register of non-profit legal entities, represented by its Chair K.V.B., holder of ID No. 00000000, versus the Ministry of Justice, represented by G.P.P., Minister of Justice, that to implementation of DG Security Unit activities at the town of P. on 23.02.2006, setting the requirement for subpoenas by virtue of Article 14, Paragraph 1, point 6 and Paragraph 2, point 4 of Regulation No. 1 of 30.01.2003 for the structure, organization and activities of the Judiciary security system, resulting in non-admission of citizens at the court building in the town of P., has committed direct discrimination on the ground of ethnic origin against M.N.K., A.N.M., S.T.Y., M.Z.S., violating the provisions of Article 4, Para 2 of PfDA.

ORDAINS by virtue of Article 47, Para 2 of PfDA termination of the established infringement.

IMPOSES to the MINISTRY OF JUSTICE compulsory administrative measures by virtue of Article 76, Para 1, point 1 of PfDA, RECOMMENDING to the Minister of Justice:

1. To refrain from the established infringement in all DG Security Units to the Ministry of Justice;

2. To deliver written instructions at the employees from the territorial units for protection of the judicial system for equal treatment of visitors, heedless of their ethnic origin.

DETERMINES by virtue of Article 67, Paragraph 2 of PfDA, that within 30 days after Recommendation's delivery, the Minister of Justice shall provide written notice to the Commission for Protection against Discrimination on the measures taken in implementation of the abovementioned mandatory instructions.

Decision is liable to appeal through Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria within 14 days of its announcement.

The appeal of decision does not suspend implementation of imposed compulsory administrative measures ordained with this decision.

18. Decision No. 46 dated 28.05.2007 on case file No. 29/2007 of CPD First Specialized Permanent Panel [31]

Discrimination on the grounds of ethnic origin
Art. 4 , Article 78, Para 1 of PfDA

Giving publicity through newspapers and juvenile delinquency workshop of the hypothesis that "B. sisters have been murdered by poor, undereducated Roma" constitutes ethnic-based discrimination, because it negatively biases public attitudes and opinions against Roma ethnic community; such implications are psychologically and scientifically ungrounded and irrelevant to the personal behaviour of the whole ethnic community.

The proceedings has been initiated by Order No. 00/00.00.2007 of CPD Chairman and has been assigned to CPD First Specialized Permanent Sitting Panel, based on signal No. 0000000 from A. K. A. from the town of A.

In the signal, Ass. Prof. T. is indicated as potential infringer - a national expert on psychology and tutor at P.H. University, - based on a publication in X Daily, quoting his statement on the B. sisters murder case.

Allegedly, Ass. Prof. T. has voiced his opinion on the B. sisters murder case, quoting his independent surveys, murderers' psychological profile, deducting that they are poor, undereducated and Roma. He linked the crime to the Muslim tradition of erasing the image, for example through stoning to death.

His statement has been quoted by X Daily, which allegedly could induce ethnic tension. The analysis is ungrounded with facts relevant for personal characteristics and specifics of the Roma ethnic community. Dr. K. expressed his concerns regarding thedissemination of that survey in printed and electonic media, since in that manner society is instructed that all Roma are murderers.

Applicant has approached the Commission with request to establish infringement affecting many persons and to pronounce the incident of public importance and interest. He has requested for public apology of Associate Professor T. for his statement.

In the course of investigation, Ass. Prof. T. delivered his written opinion denying to have drafted a psychological profile of the potential crime perpetrator or to have mentioned that B. Sisters' murderers were Roma. In fact, he had suggested a hypothesis that the potential sexual aggressors were poor, undereducated persons, probably of minority origin. He had presented that suggestion at a roundtable on juvenile delinquency and judicial reform on 00.00.2007 in the town of P., where he acted as a moderator.

Ass. Prof. T. confirmed that his suggestion provoked discussion on the murder; in his view, however, no references to ethnic or religious communities and aggressive acts have ben made.

According to the interested party, X Editor-in-Chief A.B., the newspaper has quoted verbatim Ass. Prof. T., confirming that a statement "according to psychological profile, the murderers are poor, undereducated Roma" has been made at the workshop on 00.00.2007 in the town of P. Besides, the newspaper sought and quoted in that article the opinion of the National Prosecutor who supervised the B. file, who said that judging from the psychological profile, one couldn't allege that murderers are Roma.

[31] The Decision has entered into force.

Thus, the Appeal Prosecution Office at the town of P. was contacted and clarification was sought from the National Deputy Appelate Prosecutor, who said that Ass. Prof. P. Tz. has not been requested to draft a psychological profile to sisters B. potential murderer.

Evident from the Open Hearing Record, the signal author A. K. sustains his request for public apology of Ass. Prof. P. Tz. for his statements and for aware responsibility on his behalf.

Ass. Prof. P. Tz. denied to have made such statement and did not perceive his hypothesis as abusive. He litigated that in the context of juvenile delinquency and aggressive behaviour, many experts and colleagues shared the opinion that the crime was committed by someone poor and undereducated – typical characteristics for a certain minority.

He also litigated that his hypothesis involving "the three concepts poor, undereducated and of minority origin" has been perfectly relevant for any crime of that type, since according to surveys, rich people could afford purchasing various pleasures and gratifications and they were not compelled to kill in order to obtain them. Educated person could reach consent and compromise, since he possessed the necessary communication skills. According to Ass. Prof. T., there were rapists among Bulgarians, but not among Turks and Bulgarian Muslims.

At the question, asked by a CPD Member, if the definition "minority origin" included Armenians and Jews, Ass. Prof. T. answered that among those ethnic groups there were no undereducated people and refused to clarify whet and whom he meant by suggesting that the murderers were of minority origin.

In his view, the suggestion has not victimized or charged anyone with the murder, since he has not mentioned concrete names.

He said that he dared to make a slight deviation from roundtable's key topic because that kind of forums shuld be used as an opportunity to discuss sensitive subjects and incidents, such as the B. Sisters' Murder in order to urge institutions to work on those issues.

The witnesses R.Z., Bulgarian Telergaph Agency correspondent in the town of P.; D. X., "24 Chasa" correspondent" in P. and S.P., journalist of P. Radio, who have covered Ass. Prof. T. Opinion in their columns, confirm that at the roundtable he said, "Judging from psychological profile, the murderers are poor, undereducated and of minority origin, e.g. Roma". As witnesses, they declared that the main subject was the inefficient cooperation of institutions even in cases of top priority, such as the B. sisters murder case. During the coffee break, they took interviews from Ass. Prof. T., where he spoke of the tradition of stoning to death.

The witnesses declared that Ass. Prof. T. has not objected to any of the publications quoting his words in media.

A.B., X Daily editor-in-chief, who has been summoned as interested party, denied to know any of the parties under the dispute. He declared that the article published in the newspaper was professional, presenting several viewpoints.

A.B. declared that at the editorial, any readers' comments and objections on that article have been received, except the opinion of the person who had referred the Commission, and it has been published on the next day.

Based on the collected evidence, the CPD Specialized Permannt Sitting Panel considers that publishing of ungrounded and inconsistent opinion forms negative attitude aimed directly at Roma ethnic community in Bulgaria.

When such a statement is announced in public by a respected figure, it can manipulate and bias people attitudes, creating ethnic tension, as evident from bloggers' comments in the forums of Bulgarian daily newspapers.

The Specialized Permanent Sitting Panel assumes that witness' evidences have verified and proved the statement that Ass. Prof. T. made that on 00.00.2007 in the town of P. at a roundtable on juvenile delinquency, i.e. that the B. Sisters' murderers were "poor, undereducated and of Roma origin".

The Specialized Permanent Sitting Panel considers that Ass. Prof. T. did not defend his thesis approporately. His statements deduvted from his independent surveys should not be considered even as scientific findings because they do not give credible idea for common ethnic characteristics of the different communities in Bulgaria and are irrelevant to individual traits of person belonging to the respective ethnic community .

The Specialized Permannt Sitting Panel considers that Ass. Prof. T. has violated Article 4 of PfDA, since by announcing his hypothesis he has negatively influenced public opinion against Roma ethnic community, without having any legal powers or involvement with the B. case investigation.

The Specialized Permanent Sitting Panel has established that his expert statement has biased negatively public attitudes against Roma ethnic community.

Considering all above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA in conjunction to Article 37 and Article 39 of The Rules for Proceedings before the Commission for Protection against Discrimination, CPD First Specialized Sitting Panel

DECIDED

ESTABLISHES an infringement by virtue of Article 4 of the Protection from Discrimination Act, prohibiting any direct and indirect discrimination on the ground of gender, race, nationality, ethnic origin, committed on 00.00.2007 by Ass. Prof. P. Tz. through publicly announced suggestion based on independent surveys, that the murderers of B. sisters are poor, undereducated and of Roma origin.

IMPOSES to Ass. Prof. P. Tz., a national expert on psychology, tutor at P.H. University by virtue of Article 78, Para.1 of PfDA administrative coercion a fine amounting to BGN 250 (two hundred and fifty levs) for infringement of Article 4 of PfDA.

The Decision shall be delivered to the parties on the case file.

Decision is liable to appeal through the Commission for Protection against Discrimination before the Supreme Administrative Court of the Republic of Bulgaria by virtue of the Administrative Procedure Code within 14 days of its announcement to the parties.

19. Decision No. 12 dated 18.01.2008 on case file No. 120/2006 of CPD First Specialized Permanent Panel[32]

Discrimination on the grounds of ethnic origin
Art. 62, Para 2 of PfDA

Agreement stating consent for implementation of preventive actions for educational integration of children and students of ethnic minorities and including measures for interculture education, based on the equal treatment principle and meeting the provisions of PfDA Article 62, Para 2, therefore approved by the Commission for Protection against Discrimination.

Case file No. 120 is initiated following a signal of XX Foundation situated in the city of S.- Str. XXXX, lodged at the Commission for Protection against Discrimination under No. 00000000 of CPD register for 2006.

The proceeding is by virtue of Section I, Chapter Four of the Protection from Discrimination Act.

The Commission has established the signal eligible by virtue of Article 52, Paragraph 1 of PfDA. There are no negative procedure provisions, impeding initiation of proceedings and consideration of the signal in essence.

On the case file, following parties have been constituted:

XX Foundation, S., in its capacity of sender of the signal.

The Mayor of Municipality of S., in his capacity of defendant.

The Mayor of K.P. region, in his capacity of defendant.

The Minister of Education and Science and Regional Inspectorate on Education – city of S., in their capacity of defendants.

In the course of the proceedings, at open hearing for consideration of case file No. 120/2006 on 26 April 2007, First Specialized Permanent Panel, by virtue of PfDA Article 62, has suggested to parties to reconcile and has determined the deadline (22.06.2007) for complainant and defendants to provide an agreement reflecting the dialogue between them.

Within that deadline Regional Inspectorate on Education City of S., represented by V.K. and XX Foundation, represented by M.G., have reached written agreement on 18.05.2007 that has been lodged in due time and registered at the Commission under No. 00-00-00 of 00.00.2007.

CPD First Specialized Permanent Panel by virtue of Article 62, Para 2 of the Protection against Discrimination Act, considering the agreement, has found it based on the equal treatment principle, consistent with law and morale, therefore has

DECIDED

APPROVES the agreement between Regional Inspectorate on Education in the City of S., represented by V.K. (Director) and XX Foundation (applicant, represented by M.G.), on case file No.120/2006 of the Commission for Protection against Discrimination register.

In the period 20.06.2007 - 30.06.2007 in implementation of the Strategy on educational integration of children and students from ethnic minorities, the Regional Inspectorate on Education City of S., commits to organize and make a workshop on the

[32] The Decision has entered into force.

subject of Equal Access to Quality Education for the principals of all schools on the territory of S., while XX Foundation commits to cover the costs for the implementation.

In the period 15.09.2007 - 30.09.2007 the Regional Inspectorate on Education City of S., commits to organize and make a theoretical conference for exchange of good pedagogical practices for work with children/students from different ethnic background and their full-right integration.

By 30.09.2007, the Regional Inspectorate on Education in the city of S.commits to provide materials, brochures, posters, etc. at the schools on the territory of S., in order to popularize the Protection from Discrimination Act.

By 30.10.2007, the Regional Inspectorate on Education at the city of S., with the methodological assistance of XX Foundation commits to include that in schools' annual plans on the territory of the city of Sofia, covering activities and endeavors promoting intercultural education (festivals, discussions, drama performances, topics for discussion in the Class' Hour.

TERMINATES the proceedings on case file No. 120/2006 in regard with Regional Inspectorate on Education City of S.

The agreement is liable to compulsory implementation and the Commission shall control the agreement observance. The Decision is not liable to appeal.

20. Decision No. 19 dated 25.01.2008 on case file No. 120/2006 of CPD First Specialized Permanent Panel [33]

Discrimination on the grounds of ethnic origin
Art. 62, Para 2 of PfDA

The Memorandum comprised of specific educational integration measures for children of ethnic minorities is based on the equal treatment principle and meets the provisions of PfDA, Article 62 , Paragraph 2.

Case file No. 120 is initiated on signal from XX Foundation from the city of S., lodged at the Commission for Protection against Discrimination under No. 1093030806 from CPD register for 2006.

The proceeding is by virtue of Section I, Chapter Four of the Protection from Discrimination Act.

The Commission has found the signal eligible by virtue of PfDA Article 52, Paragraph 1. There are no negative procedure provisions, impeding initiation of the proceedings and consideration of the signal in essence.

On the case file the following parties have been constituted:

XX Foundation, S., in its capacity of sender of the signal.

The Mayor of Municipality of S., in capacity of defendant.

The Mayor of K.P. region, in capacity of defendant.

The Minister of Education and Science and Regional Inspectorate on Education – city of S., in capacity of defendant.

[33] The Decision has entered into force.

During the proceedings, at the open hearing of case file No. 120/2006 on 26 April 2007, First Specialized Permanent Panel, by virtue of PfDA Article 62, proposed to Parties reconciliation and they agreed. Deadline of 22.05.2007 was determined for the complainant and the defendants to produce mutual agreement presenting their dialogue during the sitting.

Within that deadline, the Municipality of S., and XX Foundation, represented by M.G., have signed a Memorandum for Cooperation, lodged in due time and registered at the Commission under. No. 16-15-2149 on 22.05.2007. In that Memorandum, the parties have stated their joint efforts for establishing of efficient and sustainable model of municipal progamme for full integration of Roma children and pupils through desegregation of kindergartens and schools in Roma neighborhoods and creating provisions for equal access to quality education, in order to eliminate results of the infringement considered in case file No. 120/2006.

At an open hearing for consideration of case file No. 120/2006, on 27th of June 2007, the First Specialized Permanent Panel has considered the Memorandum on Cooperation, signed by Y.F. – Deputy Mayor of S. municipality and M.G. representing XX Foundation, registered at the Commission under No. 42-00-2160 on 18.09.2007 and has determined the deadline of 15 September 2007 for the parties to present a plan of concrete measures for implementation of joint activities under the Memorandum, since such have not been specified there.

Parties observed the abovementioned deadline and lodged an Appendix with tangible measures for implementation of joint activities listed in the Memorandum for cooperation, registered under No. RD-56-910 of 14.09.2007, No. 42-00-2160 from 18.09.2007 in the Commission's Register.

The Appendix to the Memorandum for Cooperation, comprised of tangible measures for implementation of joint actions of S. Municipality and XX Foundation, has been considered by the Commission's First Specialized Permanent Panel at an open hearing on 1st November 2007.

The First Specialized Permanent Panel of the Commission for Protection against Discrimination, by virtue of Article 62, Para 2 of the Protection against Discrimination Act, considering the Memorandum for Cooperation between S. municipality and XX Foundation, and the Appendix with it, has found it based on equal treatment principle, consistent with law and morale, therefore has

DECIDED

APPROVES the Memorandum for Cooperation between S. municipality and XX Foundation on case file No. 120/2006, No. 16-15-2149 of 22.05.2007 and the Appendix with it, No. 42-00-2160 as of 18.09.2007 from the register of the Commission for Protection against Discrimination, comprised of tangible measures for implementation of activities in the following major areas for cooperation:

1. Preschool training and education:

Summary of the information from ESGRAON, the Municipal Council on Education with Metropolitan Municipality, XX Foundation and the regional administrations for children and pupils subjected to compulsory training - in January every year;

Exchange of information on specific kindergartens and schools that implement a planed roll of children and pupils in preparatory groups/classes and enroll in first class for the upcoming academic year - February/every year;

Implementation of workshops with heads of kindergartens and schools at regional administrations – each February;

2. School education:

Implemented plan - the roll for 2007/2008 academic year at K.P. municipal schools - summarized information for number of students identifying themselves as Roma, residents of F. neighborhood:

Secondary School XXXXX - from prep-class to VIII class - 60 students; IX - XII class - 33 students; in total 93 students;

XXX Secondary School - from prep-class to VIII class - 119 students;

XX Secondary School - from prep-class to VIII class - 87 students;

XXXXX Secondary School - from prep-class to VIII class - 84 students;

IX - XII class - 15 students; total 99 students;

XXXXX Secondary School - from prep-class to VIII class - 130 students;

IX - XII class - 15 students; total 135 students;

XX Secondary School - from prep-class to VIII class - 30 students;

XX school - VI - XII class - 28 students;

TOTAL FOR K.P. REGION - 601 students;

Under the Desegregation Project of XX Foundation:

XXXX Secondary School – from 1st to VIII class - 61 pupils; Secondary School "XXX" - from 1st to VI class - 50 pupils;

XX Secondary School XXXXX - from 1st to V class - 31 pupils;

XX Secondary School XXXXX - from 1st to VI class - 33 pupils;

XX Secondary School XXXXXX - from 1st to V class - 34 pupils;

Opportunity for introduction of all-day organization of academic process – half-boarding groups, in accordance with the equipment and willingness of the school administration:

Deadline for parents' applications for enrolment - by 30.10.2007 each academic year;

Statement of of the school administration at S. municipality from 01.11. to 15.11. every year;

Delivery of report to the municipal council of S. on provision of transport for the pupils of Roma origin to schools outside their place of residence and provision of target funding amounting to 50 percent of the needed funding. The rest 50 percent shall be covered by XX Foundation under two programmes.

Resource/pay-roll provision of supporting experts (pedagogical advisor, resource teacher, assistant teacher) at schools, in accordance with requirements of the normative framework, on information submitted annually;

The municipality of S. will cooperate for provision of canteen food for socially disadvantaged children, according to requirements of the School Commission established by Principal's Order;

Representation of XX Foundation when deciding criteria for selection of children from socially disadvantaged families - by 01/10 every year;

Measures for drop-out prevention through provision of free lunch for socially disadvantaged children in the programme. Lodging of a report to the municipal council of S. for provision of target funding for free lunch for children under the programme and their inclusion in one-year plan for 2008 in implementation of the Strategy for Development of Secondary Education at the municipality of S and the Municipal program for child protection, after annual adoption from the municipal council.

3. Extra-curricular and out-of-school activities:

- Funding of extra-curricular and out-of-school activities, in accordance with requirements for drafting of projects at schools and in accordance with adopted plan - by 15.09.2007.

- S. municipality will provide funding for the following activities organized annually by the municipal chools in the region of K.R.:

- January 14th, Vasilitsa, the Roma New Year - traditional holiday - culture center XXXXXX – attended by pupils of XX Secondary School and A. College;

- Todor's Day – Festival of F. neighborhood, a contest for children drawing at XX School;

- April 8th - International Roma Day - attended by all schools in the region of K.R.; a football tournament;

- In May – festival of K.P. region - the concert "Europe for All" - attended by all municipal schools in the region of K.R.;

- Spring in Europe – drawing on pavement – organized by XX Secondary School – attended by all schools in the region of K.R.;

- Participation at the international festivals in Slovakia and Turkey of the municipal schools in the region of K.R.;

- September 17th – Crossroad of Muses - youth festival;

Visit of Patilantsi Children's Leisure Complex for 60 children and pupils at the summer school, organized by XX Foundation;

To provide equipment and teachers for summer school activities and work with lagging behind pupils - every year.

TERMINATES the proceedings on case file No.120/2006 in regard with Municipality of S.

The approved Memorandum for Cooperation is liable to compulsory implementation, and the Commission shall control its observance. The Decision is not liable to appeal.

21. Decision No. 141 of 20.06.2008 on case file No. 40/2007 of First Specialized Permanent Panel [34]

Discrimination on the grounds of ethnic origin

Discrimination as harassment by virtue of Article 5 in relation with Paragraph 1, p. 1 of the PfDA Supplementary Provisions and Instructions to discriminate by virtue of Article 5 in relation with Paragraph 1, point 5 of the PfDA Supplementary Provisions
Related legal norms:
Art. 4, Paragraph 1 of PfDA in relation with Article 5 and Paragraph 1, p. 1 of PfDA;
Art. 6, Paragraph 2 of the Constitution of the Republic of Bulgaria;
Art. 4, Paragraph 2 and Article 32, Paragraph 1 of the Constitution of the Republic of Bulgaria;
Art. 39, Paragraph 1, Article 39, Paragraph 2 of the Constitution and Article 57, Paragraph 2 of the Constitution of the Republic of Bulgaria;
Preamble of the Universal Declaration of Human Rights;
International Covenant on Economic, Social and Cultural Rights;
International Covenant on Civil and Political Rights.

[34] The decision has not entered into force.

Constituted parties:

1. Interethnic Initiative for Human Rights Foundation – represented by its Chairperson K.F.B. – complainant;
2. P.Y.Y., Mayor XXXX, Metropolitan Municipality – defendant.

Alleged violation:
The sender of the signal alleged that on 14.11.2006 in the XXXX program of Darik Radio, Eng. P.Y.Y., Mayor of XXXX, following the suggestion of Sofia Architect-in-Chief to settle about 150 Roma families in the neighborhood XXXX, gave statements for the Roma community, which in the sender's view constituted discrimination. In the course of proceeding, the sender has specified her request to the Commission for Protection against Discrimination as follows:
1. To ordain restoration of the initial situation, obliging the defendant to publish in Troud Daily, on his expense, an apology for his statements or to publish the dispositive of the Commission decision;
2. To impose a fine amounting to BGN 2000 on the defendant;
3. By virtue of Article 47, point 3 in relation with Article 76, Paragraph 1, point 1 of PfDA, to impose a compulsory administrative measure on the defendant – compulsory instruction to refrain in future from such statements; 4. Following point 3, CPD to impose compulsory instruction, obliging the defendant to publish in Troud Daily, on his expense, an apology for his statements or to publish the dispositive of CPD decision; 5. Optionally to point 4 of the request, by virtue of Article 47, point 3 in relation with Article 76, Paragraph 1, point 4 of PfDA, compulsory instruction to be ordained for refraining of similar statements in future. The sender of the signal insists CPD to establish that the abovementioned statements constitute discrimination/harassment by virtue of Article 5 in relation with paragraph 1, point 1 of the PfDA Supplementary Provisions against individuals of Roma origin and instruction to discriminate them by virtue of Article 5 in relation with paragraph 1, point 5 of the PfDA Supplementary Provisions

Dispositive

ESTABLISHES that P.Y.Y., Mayor of XXXX, Metropolitan Municipality, by his statements of 14.11.2006 in the air of Darik Radio, XXXX program: "I back up the citizens of XXXX neighborhood. I am against the constructing of houses on the territory of XXXX neighborhood, where 120 Roma families would be accommodated, because those 120 Roma families will grow in number for less than six months. Their relatives, friends and acquaintances from all over Bulgaria will come here. A conflict between Bulgarians and Roma will explode. You are a crime reporter, so let me tell you that of this project is implemented, you will have dozens of cases exactly in that part of Sofia... The cows in XXXX would harm by far less than a gipsy neighborhood there. I am sorry … but don't you see what will happen there only within half year? … I don't mind Roma. They have to cultivate gradually, to gain the usual habits of civilized citizens; but in the meanwhile, they cannot live among citizens because the other people will suffer of their lack of elementary habits. Such a Roma settlement is a dozen times more dangerous for the residential area than a dung-hill. Roma will swarm the area, they will rob the quarter. Residents will start selling out their apartments. Each door will be broken, each basement and every cellar will be robbed. It will be an invasion." He has performed harassment by virtue of Paragraph 1, point 1 of the PfDA Supplementary Provisions and has violated Article 4, Paragraph 1 of PfDA in relation with Article 5 and Paragraph 1, point 1 of the PfDA Supplementary Provisions.

ESTABLISHES that the abovementioned statements do not constitute instruction to discriminate by virtue of Paragraph 1, point 5 of the PfDA Supplementary Provisions and DISREGARDS the signal of Interethnic Initiative for Human Rights Foundation in its part asking for establishing of infringement of Article 4, Paragraph 1 of PfDA in relation with Article 5 and Paragraph 1, point 5 of the PfDA Supplementary Provisions

Imposes to P.Y.Y. by virtue of Article 78, Paragraph 1 of PfDA administrative sanction (fine) amounting to BGN 1000 for infringement of Article 4, Paragraph 1 of PfDA in relation with Article 5 and Paragraph 1, point 1 of the PfDA Supplementary Provisions

ORDAINS by virtue of Article 47, point 2 of PfDA restoring of the initial situation, and by virtue of Article 76, Paragraph 1, point 1 of PfDA imposes to P.Y.Y. compulsory administrative measures for elimination of the harmful consequences of the infringement, e.g.: instructs P.Y.Y. as a Mayor of XXXX, Metropolitan Municipality, a public official, to voice his apology in the air of Darik Radio for his previous statements, mentioned above and established as infringement of Article 4, Paragraph 1 of PfDA in relation with Article 5 and Paragraph 1, point 1 of PfDA, and to publish in Troud Daily the dispositive of this decision.

Imposes to P.Y.Y. by virtue of Article 76, Paragraph 1, point 1 of PfDA compulsory administrative measures for prevention of future infringements, instructing P.Y.Y. as Mayor of XXXX, Metropolitan Municipality, a public official, to refrain from similar statements in future, affecting human honour and dignity on the ground of ethnic origin.

Determines 15-day period for feedback on the implemented mandatory instructions, where the infringer has to inform in writing the Commission for Protection against Discrimination for the instructions' implementation.

Section V

Discrimination on the grounds of religion

22. Decision No. 12 of 17.04.2006 on case file No. 10/2005 of CPD Third Specialized Permanent Panel[35]

Discrimination on the grounds of religion
Art. 6, Paragraph 2, Art.39, Para.1 and Article 57, Paragraph 2 of the Constitution of the Republic of Bulgaria
Art. 4, Para 1 and Paragraph 3, Article 5 in relation to § 1, point 1 of PfDA Supplementary Provisions and Art.76, Para.1, p.1 of PfDA
Decision of Constitutional Court No. 7 of 04.06.1996 on Case 1/1996

Revealing in public of ethnic and religious belonging of minority juvenile perpetrators and suggesting of measures for control and correction constitute breach of Article 2.5.2 of the Media Code of Ethics and of Article 4, Para 1 and Article 5 in relation to § 1.1 of PfDA Supplementary Provisions. Angry speech can provoke aggressive attitude to a certain ethnic community and can instruct negative attitude to their religion.

The free expression of opinion guaranteed by the Constitution does not allow abuse or misuse of it to the detriment of others' rights or legal interests. By virtue of Article 57, Paragraph 2 of the Constitution of the Republic of Bulgaria that right is not absolute. Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.

The case file is initiated against V.G. Editor-in-Chief of XXX newspaper and V.S., journalist at XXX newspaper on the complaint, By Order of 23.11.2005 of the Commission Chairman by virtue of Article 54 of the Protection against Discrimination Act and Article 5 and Article 16 of Rules for proceeding before CPD is initiated case file No.10/2005 for discrimination on the ground of religion and belief, assigned to Commission's Third Specialized Permanent Sitting Panel.

Complainant refers the Commission to establish that a series of articles instruct to direct discrimination on religious ground. The the complainant I.G.H. grieved that:

1. Through publications' open malevolence, number and denied opportunity for equal refutation, I.G.H. and Legal Entity XXXX are affected. The disclaimer published in issue 000 of 00.00.2005 XXX Daily wais rather brief and unequal to the gravity of infringement (as evident from the Records of 03.04.2006).

Complainants refer the Commission to:

2. Impose a fine on infringers and property sanction to Legal Entity XXXX EOOD;

3. Ordain a mandatory instruction against newspaper XXX to publish an equal refutation and to refrain in future from discriminatory publications regarding the complainants I.G.H. and XXXX – Sofia Legal Entity.

Complainant has provided the following written evidences:

1. Certificate issued by the Denominations Directorate to Council of Ministers;
2. No. 00.00.000 of 00.00.2000;
3. Registration of the Denominations Directorate with the Council of Ministers;
4. No. 0000 000 of 00.00.2001;
5. Decision No. 0 of the Sofia City Court No. 0000/2003 of 00.00.2003;
6. Newspaper XXX issue 000 of 00.00.2005;
7. Refutation of I.H. to the Editor-in-Chief of XXX Daily, V.G. of 00.00.000;
8. A copy of newspaper XXX, issue 000 of 00.00.2005;

[35] The Decision has entered into force.

9. Newspaper XXX, issue 000 of 00.00.2005;
10. A copy of newspaper XXX, issue 000 of 00.00.2005;
11. Letter of Denominations Directorate to the Council of Ministers No. 00.00-000 of 00.00.2005;
12. Letter of 00.00.2005 to the Denominations Directorate with the Council of Ministers.

At the open hearing on 00.00.2006, the defendants presented written evidences for publications in several newspapers (17) listed in the Minutes. The publications date from the period 1994 – 2000

Third Specialized Permanent Panel leaves without consideration the presented publications, since they date back from more than three years, thus falling outside the provisions of Article 52, Paragraph 1 of PfDA.

By Order of CPD Chairman, the following written evidences have been produced:

- Critical publications for BPC:

1. "For the Priest E., perceived as a terrorist, communion is a duty" (issue 000/00.00.2004);
2. "Battle for 100 temples and revenues amounting to BGN 60 millions" (XXX Daily of 00.00.2004);
3. "The priests of Patriarch Maxim put on expelled prists' cassocks " (issue 000/00.00.2004);
4. "Priests ready to die for properties" (XXX Daily – P. issue 000/00.08.2004);

- Critical publications for the Islamic denomination:

1. "Radical Islam enters Bulgaria through gipsy emigrants" (issue 000/00.00.2004);
2. "Corruption is a safeguard against radical Islam" (issue 000/00.00.2004);
3. "New mufti - new dissent among Muslims" (issue 00/00.00.2005);
4. "The Mufti office is in the black list of the Red Cross" (issue 00/00.00.2006);
5.

- Critical publications for organizations disseminating religious ideas:

1. "Tauhid recruits people in S. (issue 000/000.00.2004);
2. 'The new Jesus does not pay taxes in Bulgaria" (issue 000/00.00.2004);
3. 'Horrible experiment in Siberia" (issue 000/00.00.2004);
4. "A Sect: Jesus is mad" (issue 000/00.00.2005);
5. "Christians from "S." Square honour only two of the seven mysteries" (issue 000/00.00.2005);
6. "A training for BGN 100 and you become a member of T.K. sect" (issue 00/00.00.2006);
7. "A Sect has established a Political Party" (issue 00/00.00.2006).

In a letter No. 290 of 17.03.2006, Defendants V.G., XXX Daily Editor-in-Chief and V.S., journalist at XXX Daily, ask the Commission to close the case file because the Commission:

1. Is not competent to consider a dispute exceeding the powers of competence stipulated by PfDA;

2. Initiation of case file against media would have turned the Commission in authority exercising censorship over the free expression of opinion and dissemination of information, which is prohibited by the Constitution.

The Commission is an authority that shall decide whether to initiate case file or to refuse initiation of case file by virtue of Article 52, Paragraph 1 in conjunction to Article 47, point 1 of PfDA. The Commission's competence shall encompass any direct or indirect discrimination harassment, instruction to discrimination, persecution and racial segregation in

any area of public relations. The Commission shall provide protection in the access to labour, access to training and education, trade union membership and access to goods and services. Therefore, defendants' request for termination of the proceedings before the Commission shall be left without consideration.

At the hearing, through their representative the defendants produced a new reason for termination of the case file, citing Article 39, Paragraph 1 of the Constitution, Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way in conjunction to Article 40, Paragraph 2 of Constitution, stipulating that injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours. Therefore, the complainant could refer to Court and not to the Commission.

Third Specialized Permanent Panel accepts that the Judiciary act is necessary pursuant to Article 40, Para 2 of Constitution. Complainants do not claim injunction on or a confiscation of newspaper XXX. Therefore the defendants' representative request for termination of the proceedings before the Commission shall not be referred for consideration.

1. On the grievance for publications' malevolence and number, i.e. "Gipsy Evangelist fornicates 3-years old girl," "A Dangerous Sect Promotes Miracles," "A Scandalous Sect is Back," "Now, for miracles we wait," "A. drafts a law against XXXX" in issues 000, 000, 000, aimed at I.G.H. and XXXX-S., taking into account collected evidence, the following was established:

There is religion-based harassment by virtue of Article 5 in conjunction to Article 4, Para 1 of PfDA. The publications continuously comment on the Evangelist Church antisocial activity and discredit its followers. Defendants' occupation ans social status not simply allow but obliges them to express opinions on burning issues. To discuss the illegal or antisocial behaviour of any religious communities' followers, protected by virtue of PfDA, is completely legitimate. The opposite would have led to injunction and prohibition of free expression. On the other hand, however, expressed opinions shall not abuse the honour and dignity of individuals or religious communities. As evident from Decision No. 1 dated 00.00.2003 of the Sofia City Court, XXXX-S. is filed in the Denominations Register with the Sofia City Court as a local branch of N.A.S.; by virtue of the Denominations Act, Court shall not judge if certain denomination threatens public interests.

In his letter attached to the case file, the Advisor at the Denominations Directorate to the Council of Ministers G.K. states that it is officially registered denomination that does not threaten society. The Directorate is aware of XXXX-S. initiaitves among Roma. The Denominations Directorate to the Council of Ministers stated that religious communities observing domestic legislation and developing social welfare activity, cannot be banned as sects.

The Denominations Directorate is the expert unit assisting the Council of Ministers to implement Bulgarian state policy of tolerance and respect between different denominations.

In the Preamble of the draft Code of Ethics of Bulgarian media we read that media is entitled to cover public opinion fulfilling its mission to inform society and strive for its best interests.

In the first case, the article "Who were they" suicides details are not related to Church members. For several years, members of XXXX - Sweden worked as hospital attendant at the psychiatry at the town of U., where patients' suicides have happened.

In the second case, the article "Gipsy Evangelist fornicates 3-years old girl" – the sentence "The suspect said that after sermons he and his peers retired to watch pono and had sex" is also unjustified, since it is not clear if boy's deeds were inspired by the service.

There is nothing wrong to discuss the immoral deeds of minority children and the inappropriate, offensive ways of religious communities and to make suggestions how to control them. The author's tone, however, public awareness on Christian contemporary culture and values can be raised in young people. On the contrary, described violations provoke anger and perplexity in every normal human being. Anger can provoke aggressiveness to religious community, to instruct negative attitude to religion in general and to create threatening environment for officially registered Evangelist churches in Bulgaria.

The articles' implied message constitutes infringement of the Protection from Discrimination Act by virtue of Article 5 - harassment through creating threatening environment and by virtue of Article 5, since there is less favourable treatment of XXXX-S. members to U.B.C. as compared to the other religiys denominations.

There is harassment on the ground of religion by virtue of Article 5 in relation to § 1, point 1 of PfDA. In this case, harassment is expressed verbally; the publications attempts to offend complainant's dignity in hiscapacity of religious community leader. The harassment aims to create hostile environment against the complainant. The articles firm the conviction that activities of XXXX-S. is ill-intentioned and harms society morale.

In that part, the complaint shall be considered T.K. there is harassment that by virtue of Article 5 is considered for discrimination.

At the court hearing, defendants' lawyer said that the Commission's decision will introduce censorship and will impair freedom of mass media by virtue of Article 40, Paragraph 1 of the Constitution, as well and the freedom of speech by virtue of Article 39, Paragraph 1. Provision in Paragraph 2 of the same Article, however, introduce Constitutional limitations to exercising freedom of speech, e.g. the prohibition to use that right to the detriment of the rights and reputation of others and prohibition to breed hostility (see Judgment No. 14 of 10.11.1992 on Case - 14/92, Judgment No. 7 of 04.06.1996 on Case - 1/96, Judgment No. 21 of 14.11.1996 on Case - 19/96 and Judgment No. 20 of 14.07.1998 on case No. 16/98).

In Judgment No. 7 dated 04.06.1996, the Constitutional Court explicitly indicates that equilibrium is born from the balanced exercising of free expression and fundamental rights, defined with reasonable limitations. Although valuable, freedom of expression is not an absolute right, since the Constitution protects other values, rights and interests, too, that can compete with the right of opinion and expression. The level of eligibility depends on the significance of the legitimate interest, which is also protected by the constitution.

In Article 57, Paragraph 2 of the Constitution, there is a general provision for all rights, the right to freedom of expression too, *Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others*. In Judgment No. 7 of 04.06.1996, the Constitutional Court explicitly indicates that rights by virtue of Article 39 – 41 of Constitution are not of absolute nature.

In its every decision concerning freedom of speech, the Constitutional Court confirms that it cannot be used to offend human dignity and other's rights. The Court declares human dignity and rights for utmost constitutional value. The Commission accepts that publications aimed against the complainant and his religious community have breached the limits of the guaranteed right to free expression (Art. 39, Paragraph 1 of Constitution).

The abuse of others' rights and reputation is a reason to limit freedom of expression by virtue of general provision of Article 57, Paragraph 2 of the Constitution and also by virtue of Article 39, reading "This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally

established order, the perpetration of a crime, or the incitement of enmity or violence against anyone that limits the right to opinion because of other"; in this case the right of personal dignity, honour and reputation that by virtue of Article 32, Paragraph 1 of the Constitution is protected (see Decision No. 7 of 04.06.1996 of the Constitutional Court).

The publications in newspaper XXX, produced by the defendant in letter No. 378/05.04.2006 from CPD register, have been considered in detail by the Commission and have been found legitimate regarding the right to express written opinion, comprised only of findings and not constituting harassment by virtue of PfDA.

On the other hand, a a religious community leader, the complainant also should observe Article 7, Paragraph 1 of the Denominations Act and consider national security, public order, public health and the rights and freedoms of other persons.

In relation to other publications, the Commission has established lack of indirect discrimination by virtue of Article 4, Para 3 of PfDA, since the publications in newspaper XXX were not aimed solely at the Evangelist community XXXX-S. Also, titles of articles dedicated to other officially registered denominations differentiate significantly from the titles of columns discussing the complainants, which constitutes harassment. Defendant's place in society not only allows but obliges him to express his opinion on actual issues. Discussion of illegal or socially inacceptable behaviour among the members of any officially registered denomination, protected of the Protection against Discrimination Act, is completely legitimite.

2. As of the complainants' second request for imposing of fine and property sanction to defendants, the Commission rejects it in that part the Commission accepts that publishing of such articles has been omitted of unawareness of the new antidiscrimination legislation and asks the defendant to take this decision as warning to avoid misuse of freedom of speech and freedom of mass information in future.

3. On complainants' third request, the Commission shall exercise its powers by virtue of Article 76, Para 1, point 1 of PfDA and shall ordain mandatory instruction in regard with Editor-in-Chief of XXX newspaper for elimination of the established infringement of anti-discrimination legislation and to refrain from breaching antidiscrimination legislation against all officially registered religious communities in future.

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA and Article 36 in conjunction to Article 37, Article 38 and Article 39 of the Rules for Proceedings before the CPD, Third Specialized Permanent Sitting Panel,

DECIDED

1. CONSIDERS the complaint of XXXX-S., local branch of NA O.B.T. and I.G.H. in the part for suffered discrimination in the form of religious harassment by virtue of Article 5 in relation to § 1, point 1 of PfDA.

2. REJECTS the complaint in the part й for suffered indirect discrimination by virtue of Article 4, Para 3 of PfDA.

3. REJECTS complainants' request for ordainance of fine and property sanction against the defendants V.G., XXX Daily Editor-in-Chief and V.S., journalist at XXX newspaper.

4. ORDAINS mandatory instruction by virtue of Article 76, Para 1, point 1 of PfDA, obliging V.G. Editor-in-Chief of XXX Daily to eliminate the established infringement of the antidiscrimination legislation and to refrain in future from violations of the antidiscrimination legislation against all officially registered religious communities.

23. Decision No. 37 of 27.07.2006 on case file No. 65/2006 of CPD Third Specialized Permanent Sitting Panel[36]

Discrimination on the grounds of religion
Art. 6, Paragraph 2, Article 13 and Article 37, Paragraph 2 of the Constitution of the Republic of Bulgaria
Art. 4, Para 1 of PfDA, § 1, point 5 of PfDA Supplementary Provisions and Article 80, Paragraph 1 and Paragraph 2 of PfDA
Art. 11, Paragraph 1 and Paragraph 4 of the Child Protection Act
Art. 5 of Public Education Act and Article 4 of Rules for Application of the Public Education Act
Art. 7, Paragraph 1 of the Religious Denominations Act
Art. 18, Paragraph 3 of the International Covenant on Civil and Political Rights
Art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

The right to education is guaranteed by the Constitution of the Republic of Bulgaria. Education in Bulgaria is secular and as stipulated in the provisions of Article 5 of the Public Education Act and Article 4 of the Rules for Application of the Public Education Act, imposing of ideological and religious doctrines is prohibited. The provisions of Article 11, Paragraph 1 of the Child Protection Act ordain that every child has a right to protection against involvement in activities that are harmful to his or her physical, mental, moral and educational development, and Paragraph 4 of the same article stipulates that every child has a right to protection against forcible involvement in political, religious and trade union activities. By virtue of Article 7, Paragraph 1 of the Religious Denominations Act freedom of denomination cannot be aimed against national security, public order, public health and moral or against rights and freedoms of other. The provisions of Article 18, Paragraph 3 of the International Covenant on Civil and Political Rights and of Article 9, Paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms allow restraint of the freedom of denomination in certain occasions. The Human Rights Committee has adopted General Comments by virtue of Article 18 of International Covenant on Civil and Political Rights, reproduced in UN HRI/GEN/1/ Rev. 5. There, the limits of the right to exercise freedom of denomination or beliefs are commented; freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 47, Paragraph 2, point 5 of Rules for School Activities explicitly states that "students shall not instruct to confrontation on political, ethnic and religious grounds through different forms (speech, apparel, distinctive features and rituals)".

The signal has been submitted by S. District Governor. Dr. P.F. concerning complaint of XXXX Association from the city of S.The complaint is registered under No. 447180406 of the Commission Register and case file No. 65/2006 has been initiated. The complainant alleges for discrimination against Muslim students and quote the inident with M.T. from XXXX High School Principal in the city of S. The alleged discrimination is expressed as

[36] The Decision has entered into force.

giving lower marks to Muslim students, leaving them for supplementary exams or to repeat the academic year.

The complaint is against the Headmister of XXXX High School and against XXXX Association city of S. (as there is no such entity, the Commission shall accept that it is against XXX – city of S.).

In a complaint to the National Assembly, XXXX Association alleges that pursuant to the Internal Regulations, in some schools compulsory school uniform has been introduced to deny Muslim schoolgirls to wear the traditional religious attire. The primary purpose of Islamic clothing is to cover a man and a woman's body as prescribed by Islamic law. Complainants allege that this is "discrimination of criminal nature". Literal quotation: "We believe that school is not a legislative body and cannot nulify domestic and international legislation on fundamental human rights because of its Internal Rules. Those principles stand above whims." They want, in the logics of the The Qur'an, an amendment of the normative framework referring to personal ID documents to be made.

Complainants' requests are:

1. To the National Assembly, to amend the Public Education Act in order to avoid any form of discrimination on religious or racial ground.
2. To the National Assembly, to amend the rules on personal ID documents, allowing Muslim women to have pictures with headscarfs.

On thus formulated requests, put in the complaint of XXXX Association – city of S.to the National Assembly of the Republic of Bulgaria, attached to the signal of the S. District Governor, the Commission for Protection against Discrimination refused to pronounce a decision in this proceeding on case file No. 65 of CPD register for 2006, since it was not requested to enforce its powers by virtue of Article 47, point 6 of the Protection against Discrimination Act.

The Commission accepts that it has been approached through District Governor of S. concerning his request for request the Regional Inspectorate on Education with the Ministry of Education and Science to terminate the discriminatory treatment of Muslim students at XXXX High School at the city of S. Evident from the Records of open hearing on 12.06.2006, complainants refer only to their requests and pretences to XXXX High School Board.

The proceedings is by virtue of Chapter Four, Section I of PfDA.

The Commission has established the complaint eligible considering the administrative authority referral in due term by virtue of Article 52, Paragraph 1 of PfDA and Article 9, point 1 of the Rules for Proceedings before the CPD, since the three-year period is observed. There are no negative procedure provisions to impede initiation of the proceedings or the consideration in essence.

When the rapporteur visited S., she spoke to R.J., Head of "Monitoring, Organisation and Methodology Activities" Unit at the Regional Inspectorate on Education. Written evidence was prodiced, i.e. a request of XXXX High School Proncipal M.T., dated 00.00.2005, to the Minister of Education and Science. In the letter, M.T. sought advice and assistance on the case of M.M.V. who attended school classes in Muslim religious apparel (wearing a hearscarf) on 15.09.2003. The incident created tension at school, since the schoolgirl wore religious attribute that was not part of the school uniform. The situation got worse when another schoolgirl F.V.K. of 11th grade came to school wearing the same religious attribute on 15.09.2005. On both occasions, school management approached the situation not from religious perspective but due to disobedience of school uniform requirements and Internal Rules, which bred instability. The Principal stated that after her conversation with F.K., representatives of XXXX Association – S. visited her. They accused her in attempt to ban the two schoolgirls' personal beliefs and to exclude them from school.

Following the Principal's request, the RIE Head assigned an Ad Hoc Workgroup that had to check the facts and circumstances, laid by the XXXX High School Principal.

Report 122/29.11.2005 presenting the key check-up findings, states that the two schoolgirls attend classes with headscarf and full Islamic dress since January. The schoolgirls have not reported of insults or abuses on the part of school management. They were told that their behavior breaches Article 47, Paragraph 2, point 5 of the Rules and Order of School Activities and create tension among students. Thus, M.T. was concerned about mass disobedience at school. The Ad Hoc Workgroup cites Article 139, Paragraph 1 of the Rules for Application of the Public Education Act, stipulating that The student is also obliged to fulfill his educational responsibilities, to abide by the rules of the school, the rules of conduct in school and society, and the laws of the country, to preserve and develop the traditions of the school (Art. 135). For violation of these obligations sanctions are envisaged (Art. 139). In conclusion, the Commission reckons that wearing of headscarf and full Islamic attire does breach the regulations of Rules for application of the Public Education Act and may lead to imposing of sanctions; thus, it cannot be used to offend schoolgirl's personal dignity.

The Repert findings allow the Pedagogical Council to impose sanctions over the schoolgirls, since they have failed to fulfill their duties and obligations, envisioned in the Rules and Order of School Activities. During the field-survey at XXXX High School, the rapporteur established that the Pedagogical Council respected the two schoolgirls' personal dignity and had not imposed any sanctions on them. The girls have been only advised to follow the school uniform requirements.

The Rules and Order of School Activities, in force since 2002, amended in 2003, 2004 and 2005, has been prodiced as evidence.

During the investigation phase, the rapporteur visited the High school of Economics in the city of S.and and spoke to M.M. (pedagogical advisor). It was found that the two schoolgirls have excellent marks and obtain scholarships. The rapporteur checked the dress code for the rest students during school classes. At that moment, the two schoolgirls – M.V. and F.K. have been dressed in a manner breaching the school uniform requirements.

After that visit, M.T., XXXX High School Principal, submitted a letter to the Commission, stating that several other checks have been made but no one took the responsibility to deliver an expert opinion. As a Principal of High School of Economics, a secular education facility, she disapproved putting pupils of a certain religion at privileged situation and promoting breach of endorsed school dress code.

M.T. litigated the indictment of XXXX Association for "intentional" introduction of uniform requirements. The school uniform has been introduced before girls' decision to put on the full Islamic dress.

The Head of Islamic Development and Culture Association (IDCA) at S. Interpreted M.T. actions as "interference and undertaking of measures banning pupils from following their religious duties, therefore constituting direct and indirect discrimination."

On the Commission's request, two written expert opinions have been obtained: 1. From Professor I.J., Head of the Denominations Directorate with the Council of Ministers, registered under No. 607 of 18.05.2006 from the Commission register and 2. From D.V., Vice Prime-Minister, Minister of Education and Science registered under No. 810a dated 21.06.2006 from the Commission register.

Following a reconciliation invitation by virtue of Article 62, Paragraph 1 of PfDA and Article 32, Paragraph 1 of the Rules for Proceedings before the CPD, Parties could not reach agreement for reconciliation. Consideration in essence followed.

Open hearing on case file No. 65 from CPD register for 2006 was conducted on 12.06.2006, attended by representatives of XXXX Association: S.S. on complainant's behalf, Deputy Chairman of IDCA and M.R.J.; and XXXX High School Vice Principal K.A.P. for

the defendant. At the sitting, XXXX Association legal representative S.S., produced the following evidence:

1. Letter of Education Deputy Minister Y.N., permitting M.V. to attend school with Islamic attire;

2. Letter from RIE-S. Head, M.M., to M.V. stating that discriminatory treatment against her has not been established and that all schools, XXXX High School including, are obliged to follow the adopted Rules for School Activities;

3. Open letter of group Bulgarian Muslim women supporting the the complaint and the two schoolgirls.

After open hearing's closure, Third Specialized Permanent Panel declaring that the dispute has been clarified from factual and legal perspective (without any objections from the Parties') and announcing of the date for final decision, a new complaint was lodged with the Commission, from M.M.V. to the Ministry of Education Inspectorate, copied to the: District Governor, the Head of RIE, XXXX High School Principal (addressees are cited literally), passed by the complainants. The Panel's Chair did not admit it as evidence, since it has not been produced at the open hearing, breaching Article 33, Paragraph 1 of the Rules for Proceedings before the CPD. The document shall not be considered evidence, since its entry immediately after the first session breaches the endorsed procedures.

On 14 July 2006 (two days after the open hearing), an opinion of GMMH has been lodged with the Commission for Protection against Discrimination, No. 000 of the General Mufti Office Register and No. 954 dated 14.07.2006 in the Commission's Records. Third Specialized Permanent Panel has submitted a request for opinion to the the General Mufti Office on 10 May 2006 evident from its No. 560/10.05.2006 of the Commission Records. As evident from the post receipt, the letter was received on 19.05.2006. The Opinion has been rejected as written evidences by the Board's Chair, since it arrived after the open hearing. The Commission shall not consider the opinion as evidence.

Considering all written evidences, written explanations of XXXX High School Principal, written opinions of Professor I.J. Head of Denominations Directorate to the Council of Ministers on 17.05.2006 and D.V., Vice Prime-Minister and Minister of Education and Science, and the parties' opinions expressed at the sitting in essence, held on 12.07.2006, the Commission has established of factual and legal point of view the following:

The Pedagogical Council of XXXX High School in the city of S., as a specialized body for consideration and managing of major pedagogical issues by virtue of Article 38, Paragraph 1 of the Public Education Act, in accordance with its legal powers, stipulated in Article 150, Paragraph 1, point 1-12 of the Rules for Implementation of the Public Education Act, has adopted Rules of Order in the High School involving compulsory uniform apparel for students. XXXX High School Principal has adopted decision of the Pedagogical Council, approving students' uniform apparel. By virtue of Article 135, point 1 of Rules for Implementation of the Public Education Act, students shall attend school classes attired according to the uniform policy, by virtue of the Rules and Order of School Activities.

By virtue of Article 38, Paragraph 1 of the Public Education Act and in accordance with its legal powers, stipulated in Article 50, Paragraph 1, 1-2 of Rules for Application of the Public Education Act, the Pedagogical Council of XXXX High School has determined the internal rules, signs and symbols. By virtue of Article 7 of Rules and Order of School Activities in conjunction to Article 47, Paragraph 2, point 2, since 15.09.2003, pursuant to Decision No. 11 of 07.07.2003 of the Pedagogical Council (see written explanations of XXXX High School Principal registered under No. 000 of 00.00.2006 from CPD register), students shall attend school classes attired in uniform - black trousers/black skirt, white shirt, crimson vest, a badge. Therefore, the allegation for intentional introduction of dress code only to ban Muslim pupils from wearing the Qur'an compulsory attire shall be left without

consideration. The CPD Third Specialized Permanent Panel accepts that in that part the complaint shall be rejected as unjustified.

When questioned by the rapporteur and the Board's Chair for the sense and meaning of the concept "criminal" in the alleged "discrimination of criminal nature" against the two Muslim students, the applicant's legal representative S.S. confided that the term was rather exaggerated. He confirmed that no crime has been committed, nor attack against the schoolgirls (see Record of 12.07.2006, S. 19). The Commission shall consider that no criminal deed against the two schoolgirls has been committed and shall not refer to the Prosecution Office by virtue of Article 59, Paragraph 3 of PfDA. It also warns XXXX Association to refrain in future of such statements that constitute the crime of calumny by virtue of Article 147, Paragraph 1 of the Penalty Code.

At XXXX High School in the city of S.by virtue of of Article 5 of Public Education Act, education is secular. By virtue of Article 4 of Rules for Implementation of the Public Education Act, secular education does not allow imposing of ideological and religious doctrines on students. In accordance with the Rules for activities of XXXX High School in the city of S.in Article 47, Paragraph 2, point 5 it is explicitly stated that students is not allowed to instruct to confrontation on political, ethnic and religious grounds through different forms (speech, apparel, distinctive features and rituals). That provision does not contradict to the Constitution, as the complainant representative S.S. alleged (see Record of 12.06.2006 page 10-11) on the following considerations:

By virtue of Article 6, Paragraph 2 of Constitution of the Republic of Bulgaria, *All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status*. This fundamental principle is further developed in norms regulating fundamental rights and obligations of the citizens, including Article 37, Paragraph 1 of the Constitution, stipulating that the freedom of conscience, freedom of thought and choice of denomination and of religious or atheistic views are inviolable, and the State shall foster tolerance and respect between different denominations, believers and non-believers. That fundamental right is protected in Article 38, Paragraph 1 of the Constitution, *The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The state shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers*.

According to complainants, introduced uniform breaches their fundamental right to denomination and creates precondition for discrimination on religious ground. Allegedly, the school management was intolerant. International law provides a definition of the concept of "tolerance", namely in the Declaration of Principles on Tolerance, affirmed in Resolution 5.61 of the UNESCO Conference of 16 November 1995. The Resolution has political and moral significance in modern society, since it was adopted by international intergovernmental organization.

What is tolerance according to the Resolutions?

In Article 1, point 1 of Declaration we read, *Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.* Paragraph 2 of the same article reads: *Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of*

these fundamental values. Tolerance is to be exercised by individuals, groups and States. Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments... (Art. 1, point 3 of the Declaration).

Art. 5, Paragraph 1 of Declaration for Elimination of All Forms of Intolerance and of Discrimination on the Grounds of Religion or Belief, adopted with Resolutions No. 36/55 of UN General Assembly explicitly states that: *The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.* Paragraph 3 of that Article states: *The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.*

Those provisions constitute a call for tolerance by all, meaning that international standards cannot be applied only against one or another minority or majority, without account for the interests, freedoms and rights of the others. In the given case, complainants are not tolerant to all other pupils who fall outside their own group, comprised of the two schoolgirls of XXXX High School. The Commission for Protection against Discrimination is referred to ordain a decision inoring the rights of Muslim students who agree with the requirements of secular education and the rights of students belonging to other religions and those who are atheists. It is everyone's irrevocable right to manisfest their denomination or beliefs in private life; however, they shall not be imposed on the whole society through exaggerate demonstrations. Spirituality is a very intimate area of each person that should not be exploited in public from parents or other persons or organizations. Parents have the right to form their children's views, religious values including, but cannot use or admit use of their children's views to the detriment of other persons and beliefs.

The Commission considers that XXXX Association's requests goes beyond tolerance and suggests an approach that would subject to unequal treatment all other students, who do not wear headscarfs and other ritual apparel during school classes. Complainants pretences, if respected, would have led to direct discrimination against all students who disagree to breach the school uniform or other rules and who refuse to tolerate the infringers of those rules.

Key issue, in the Commission's opinion, refers to the limits of freedom of thought, conscience and denomination.

By virtue of Article 37, Paragraphs 1 and 2 of Constitution, *the freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers. The freedom of conscience and religion shall not be practised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.* Similar limitation can be found in domestic and international treaties, under which Bulgaria is a Party, and that by virtue of Article 5, Paragraph 4 of Constitution, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.

The provisions of Article 18, Paragraph 3 of the International Covenant on Civil and Political Rights and Article 9, Paragraph 2 of European Convention for the Protection of Human Rights and Fundamental Freedoms shall be considered.

The Human Rights Committee, established pursuant to Article 28, Paragraph 1 of International Covenant on Civil and Political Rights, adopted in 1993 General Comments No.

22(48) by virtue of Article 18 of the Covenant, reproduced in UN HRI/GEN/1/ Rev.5. That act stipulates the limits of exercising the freedom of denomination and beliefs. Point 8 underlines that Article 18, Paragraph 3 of the International Covenant on Civil and Political Rights allows only to such limitations that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Limitations are allowed only in presence of the two preconditions: 1. law and 2. protection of public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 11, Paragraph 1 of the Child Protection Act stipulates that Every child has a right to protection against involvement in activities that are harmful to his or her physical, mental, moral and educational development. Paragraph 4 ordains that Every child has a right to protection against forcible involvement in political, religious and trade union activities. By virtue of Article 2, In the meaning of the present Act a child shall be any natural person, who has not reached the age of 18, in compliance with Article 1 of the Convention for the Rights of Children, ratified in Bulgarian legislation, as stipulated in Article 5, Paragraph 4 of the Constitution. Furthermore, both the Convention and the Act promulgate child's interests as superior and utmost. The prohibition to exploit minor and under-age is imperative and restrains the right to religious belonging manifestation.

The provisions of Article 7, Paragraph 1 of the Religious Denominations Act stipulates that freedom of denomination cannot be used against national security, public order, public health and morals or against others' rights and freedoms.

In many judgments by virtue of Article 9, Paragraph 2 of ECHR, the European Court of Human Rights established that the right to free thought, conscience and religion – i.e. inviolability of private life is unconditionally guaranteed by the Convention. Limitations are possible only in regard with external manifestations of thought conscience and religion by virtue of Article 9, Paragraph 2 in relation to religious convictions and other beliefs (decisions of 25.05.1993, Kokkinakis v. Greece, A. 260-A) and by virtue of Article 10, Paragraph 2 of the Convention in relation to free expression of opinion, in general.

Article 9 of ECHR does not means that anyone can step back of his duties and obligations, agreed willingly and without explicit reservations. For example, the European Commission of Human Rights on complaint No. 1627890, Karaduman v. Turkey, ruled as inadmissible a case in which a university student refused to remove her headscarf in order to obtain a degree certificate. The Commission took the view that a student joining a secular institution would be obliged to comply with the rules of that institution. Limitations considered in Article 9, Paragraph 2 are necessary for a democratic society and a short list of protected interests is produced, as reasons for limitations. The list includes protection of public order, morals and protection of others' rights and freedoms. Those three grounds are explicitly mentioned in Article 37, Paragraph 2 of the Constitution of the Republic of Bulgaria, too. In the judgment on Case Engel et al. 1976, the European Court of Human Rights accepts that "public order" by virtue of Article 9, Paragraph 2 ECHR actually refers to the concept "order in places accessible for all". Obviously, secular school is a place accessible for all, where breeding of tension and instability through external demonstration of religious belonging and religious views is inadmissible.

The Constitutional Court of the Republic of Turkey, in its Decision of 7 March 1989 (published in Official Journal of 5 July 1989) ordains that that secularism, as the guarantor of democratic values, was the meeting point of liberty and equality before law. the Court considered that, when examining the question of the Islamic headscarf in the Turkish context, there had to be borne in mind the impact which wearing such a symbol, which was presented or perceived as a compulsory religious duty, may have on those who chose not to wear it. As had already been noted, the issues at stake included the protection of the "rights and freedoms of others" and the "maintenance of public order" in a country in which the majority of the

population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith. Imposing limitations on the freedom to wear the headscarf could, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since that religious symbol had taken on political significance in Turkey in recent years.

The European Court of Human Rights (in Full Chamber by virtue of Article 43 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) in its motives to Judgment of 18 May 2005 on case Leyla Şahin v. Turkey, initiated on complaint No. 44774/98, underlines that secularism, as the guarantor of democratic values, was the meeting point of liberty and equality. The principle prevented the State from manifesting a preference for a particular religion or belief; it thereby guided the State in its role of impartial arbiter, and necessarily entailed freedom of religion and conscience. It also served to protect the individual not only against arbitrary interference by the State but from external pressure from extremist movements. Against that background, it was the principle of secularism which was the paramount consideration underlying the ban on the wearing of religious symbols in universities. In such a context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire, including, as in the case before the Court, the Islamic headscarf, to be worn on university premises.

The transposition of the European Court of Human Rights decision in this case would mean that competent authorities have failed to undertake adequate measures to protect secularism of public and municipal education and have subjected to inequal treatment all students who observed the provisions of the Public Education Act, the Rules for Application of that Act and the Rules for activities of XXXX High School. In regard with schoolgirls M.M.V. and F.V.K., they have been tolerated at expense of the rest students. In that part the complaint shall be discarded as unjustified.

Point 8 of the above-quoted General Comments of the Human Rights Committee, emphasizes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Bulgarian society is traditionally tolerant. Thus, unscrupulous imposing of ethnic moral values is inadmissible. In this case, XXXX Association attempts to impose at secular school a morale that is uncommon for the rest students, who observe the internal rules of XXXX High School.

Resolution 1464, Women and Religion in Europe, (October 2005) of the Council of Europe, reads, “It is the duty of the member states of the Council of Europe to protect women against violations of their rights in the name of religion and to promote and fully implement gender equality. States must not accept any religious or cultural relativism of women’s human rights. They must not agree to justify discrimination and inequality affecting women on grounds such as physical or biological differentiation based on or attributed to religion. They must fight against religiously motivated stereotypes of female and male roles from an early age, including in schools. … The Parliamentary Assembly thus calls on the member states of the Council of Europe to … ensure that freedom of religion and respect for culture and tradition are not accepted as pretexts to justify violations of women’s rights, including when underage girls are forced to submit to religious codes (including dress codes), their freedom of movement is curtailed or their access to contraception is barred by their family or community. Where religious education is permitted in schools, ensure that this teaching is in conformity with gender equality principles”.

Since the signal was submitted by a NGO and not by the two schoolgirls, we cannot assume that they have been urged to attend secular school wearing headscarfs. The involvement of the two schoolgirls in TV programs is a form of psychic pressure, since they are of minor age and such media performances boost their self-confidence and make them exaggerate their own importance. Still, they do not realize that their behaviour can abuse their school mates' and teachers' rights who nevertheless have treated them with due tolerance and respect.

In the given case, Muslim believers obliged to wear a veil covering their heads, have not been placed in less favourable position, since the two schoolgirls have selected to study at XXXX High School in the city of S.and thus, they have willingly adopted the School Rules and Requirements.

The Commission accepts that wearing of Islamic attire at a secular school gives precondition for less favourable treatment of believers in other religions. The other Muslim students and the students of other denominations and non-believers are put in disadvantaged position, affecting their rights and freedoms as compared to Muslims, in the part concerning religious attire. Such observance of religious norms is a matter of subjective judgement and could allow radicalism and extremism. Certainly, in this case there is no radical religious fundamentalism contradicting to secular State norms, as regulated of the Constitution in Article 13, Paragraph 2. Factual restraint of rights and freedoms of the others is a reason for introduction of limitations by the State and versed bodies, through temporary effective measures, by virtue of Article 18, Paragraph 3 of International Covenant on Civil and Political Rights and Article 9, Paragraph 2 of the ECHR.

In this case, wearing of religious apparel at school is inadmissible for secular education, at school with uniform requirements, in particular. The varied reactions of competent authorities, as evident from produced written evidences, have not facilitated the resolving of the issue, nor have prevented the discriminating practices expressed as demonstration of religious belonging. In that sense, the passive attitude of the Regional Inspectorate on Education with MES, city of S., and the position of MES shall be noted. The envisioned actions of the abovementioned governmental bodies constitute infringement of Article 11, Paragraph 4 of the Child Protection Act and of Article 4 of the Rules for Application of the Public Education Act.

The Public Education Act and in the Rules for Application of the Public Education Act stipulate a set of rules that are adopted by the Pedagogical Council at every school and the Rules and Order of School Activities are applied, in favour of school order. It is justified to restrain personal rights in favour of public interest. In this case, attending school in Islamic attire breaching the Regulations that are equal for all students, has put Muslim believers in privileged position, since their religious dress code contradicted the uniform requirements as set in the Rules for School Activities. That privileged state breaches the principles for equal treatment of students and stultifies the Internal Regulations.

There are many judgments of the the European Court of Human Rights ruling that the individual right to follow religious doctrines in public shall not be absolute. Religious belief does not encompass every religion-motivated action. For example, According to the European Court of Human Rights, the obligation for a teacher to observe normal working hours which, he asserts, clash with his attendance at prayers,may be compatible with the freedom of religion (see *Ahmad v. the United Kingdom*, N° 8160/78); complaint 45631/99 Helmi Baspinar v Turkey on limitations of religious right.

The Commission for Protection against Discrimination established that discrimination has not been committed by virtue of Article 4, Para 2, nor by virtue of Article 4, Para 3 of the Protection from Discrimination Act by XXXX High School Board against F.V.K. and M.M.V. The complaint shall be completely discarded as unjustified.

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA and Article 36 in conjunction to Article 37, Article 38 and Article 39 of the Rules for Proceedings before CPD, Third Specialized Permanent Sitting Panel

DECIDED

COMPLETELY REJECTS AS UNJUSTIFIED the complaint of XXXX Association from the city of S., represented by S.S., Deputy Chairman and M.R.J., resident of XXXX Blvd, city of S. due to lack of discrimination by virtue of Article 4, Para 2 and Paragraph 3 of the Protection from Discrimination Act, allegedly committed by XXXX High School Board in the city of S.agaisnt schoolgirls F.V.K. and M.M.V.

ESTABLISHES that the complainants – XXXX Association – city of S., represented by S.S., Deputy Chairman and M.R.J., resident of XXXX Blvd., No. 00, city of S., have committed actions qualified as as "instruction to discriminate" by virtue of § 1, point 5 of the Protection from Discrimination Act Supplementary Provisions, which constitutes infringement by virtue of Article 78, Para 1 of PfDA.

IMPOSES THE ADMINISTRATIVE SANCTION "PROPERTY SANCTION" for INSTRUCTION TO DISCRIMINATION to the XXXX Association resident of XXXX Blvd., city of S. by virtue of Article 80, Paragraph 2 of the Protection against Discrimination Act in amount on 250 (two hundred and fifty levs).

RECOMMENDS by virtue of Article 47, Para 4 of the Protection against Discrimination Act to XXXX Association – city of S., represented by S.S., Deputy Chairman and M.R.J., resident of XXXX Blvd, city of S.to refrain in future of creating preconditions for discrimination.

ESTABLISHES that the pedagogic council of XXXX School in the city of S., represented by the Principal M.T., resident of XXXX Str., city of S., has committed direct discrimination by virtue of Article 4, Para 2 of the Protection against Discrimination Act aganst all students who observe the requirement for uniform, compared to the two schoolgirls who did not observe that requirement.

RECOMMENDS to M.T. to refrain in future from actions leading to inequal treatment of students at XXXX High School in the city of S.

IMPOSES a property sanction to XXXX High School in the city of S. by virtue of Article 80, Paragraph 2 of the Protection against Discrimination Act amounting to BGN 250 (two hundred and fifty levs).

ESTABLISHES that the Minister of Education and Science and Regional Inspectorate on Education to the Ministry of Education and Science in the city of S. failed to undertake the necessary actions to tackle the incident at XXXX High School in the city of S. and have allowed by virtue of § 1, point 7 of the Protection against Discrimination Act less favourable treatment Supplementary Provisions of students of XXXX High School in the city of S. who observe the uniform apparel.

Recommends to the Minister of Education and Science by virtue of Article 47, Para 8 of the Protection against Discrimination Act to initiate an amendment to the Rules for Application of the Public Education Act in Article 150, Paragraph 1, point 12 referring to uniform, in order to prevent discriminatory practices.

IMPOSES a property sanction to the Ministry of Education and Science by virtue of Article 80, Paragraph 2 of the Protection against Discrimination Act because the Minstry and its local unit, the Regional Inspectorate on Education in the city of S., failed to undertake adequate measures pursuant to Article 11, Paragraph 4 of the Child Protection Act and Article 4 of Rules for Application of the Public Education Act amounting to BGN 500 (five hundred levs).

IMPOSES a property sanction to the Regional Inspectorate on Education with the Ministry of Education and Science – city of S.by virtue of Article 80, Paragraph 2 of the Protection against Discrimination Act that are not undertook adequate measures for implementation of the provisions of Article 11, Paragraph 4 of Child Protection Act and Article 4 of Rules for Application of the Public Education Act amounting to BGN 500 (five hundred levs).

THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION SHALL EXERCISE PERMANENT MONITORING BY VIRTUE OF Article 40, Paragraph 1 of the Protection from Discrimination Act over the activities of the Ministry of Education and Science, the Regional Inspectorate on Education – City of S., XXXX High School in the city of S. and XXXX Association from the city of S.

24. Decision No. 38 of 22.02.2008 on case file No. 37/2007 of CPD AD HOC Sitting Panel[37]

Discrimination on the grounds of religion
Art. 6, Paragraph 2, Article 37, Paragraph 1 of the Constitution of the Republic of Bulgaria
Art. 26, point 2 of the Universal Declaration on Human Rights;
Art. 4, Para 1, § 1, point 5 of PfDA Supplementary Provisions
Art. 5, of Public Education Act
Art. 4 of Rules for Application of the Public Education Act

The Internal Regulations of XXXX High School in the town of D. do not foresee compulsory uniform requirements or dress code and the complainants regularly attend school classes wearing headscarfs as symbol of their Islamic belief. They have not been warned against it by V.S.V.., XXXX High School Principal and T.P.P., Head of the Regional Inspectorate on Education at the city of S. Thus, the complainants' right to education has not been breached and their right to attend school classes has not been restricted on the ground of religion. The alleged possible necessity "compelling them to take their headscarfs down if such Order arrived", shall not be considered by the Specialized Permanent Sitting Panel, because it is not supported by the rest evidences. Discrimination in the right to education on the ground of religion has not occurred, since the lady complainants regularly attended school classes wearing headscarfs and their behaviour has not breached the School Regulations of XXXX High School the town of D.

Case file No. 37 of 2007 of the Commission for Protection against Discrimination Records is initiated on a complaint registered under No. 670050507, lodged by R.K.S., F.K.C. and U.A.S. of S. G., D. Municipality. The lady applicants describe a warning by

[37] With Decision No. 6139 of 27.05.2008 under administrative file No. 4443/2008 of the Surpreme Administrative Court, the decision was abrogated in the part where the Minister of Education and Science is given recommendation and mandatory instruction with one month for implementation, by virtue of Article 47, Para 4, 6 and 8 in relation to Article 76, Para 1.1 of the Protection from Discrimination Act. In the rest part, the Decision has entered into force.
** The Decision is signed with particular opinion of the Rapporteur, as enclosed.

V.S.V.., XXXX High School Principal in the town of D., where the girls studied in 10th grade. The warning refers to girls' Islamic attire during school classes. Allegedly, the Principal warned them to chose between headscarfs and school.

Lady complainants felt subjected to unequal treatment as compared to the rest students who were free to choose their dress style. They refer the Commission to protect their rights.

Based on the complaint for discrimination on the ground of religion and belief, case file No. 37/2007 by Order No. 105/16.03.2007 of the CPD Chairman was initiated by virtue of Article 50, and Article 51, Para 1 of the Protection from Discrimination Act (PfDA) and by virtue of Article 54 of PfDA it was assigned for consideration of AD HOC Panel.

The complaint was lodged in due time by virtue of Article 52, Paragraph 1 of the Protection from Discrimination Act (PfDA) and is eligible.

Constituted parties:

In their capacity of complainants:
R.K.S.;
F.K.C.;
U.A.S.;

In the capacity of defendant:
V.S.V.. - XXXX High School Principal the town of D.,
T.P.P. - Head of Regional Inspectorate on Education - city of S.

In the supplementary written explanations registered under No. 44-00-5019 of 04.05.2007, R.S. has clarified that the decision to approach the Commission for Protection against Discrimination has been provoked by Principal's warning to the lady complainants on 23.02.2007 that "they might be compelled to put their headscarfs off if such Order arrived".

The explanations refer to a meeting between J.J., Municipal Council Chairman and the Principal, where the latter was verbally instructed to warn the schoolgirls they might be compelled to take their headscarfs down if such Order arrived.

R.S. litigates that by the moment of submitting the written explanations on 04.05.2007, the girls freely attend school classes.

In his Opinion on the complaint, School Principal stated, "no one has ever prohibited them to attend school classes with headscarfs (because there isn't a reason for that) and they haven't missed a single class. The schoolgirls have been warned by the Principal that pursuant to Order by the Head of Regional Inspectorate on Education in the city of S., they might be asked to take their headscarfs down, if such Order arrived. The Principal explains that "since there is no such Order, nor teachers, not the principal or deputy headmasers have objected against their headscarfs; the schoolgirls attend school regularly and have excellent marks." There is no school uniform requirement, he added.

During the investigation phase, Opinion of the Regional Inspectorate on Education - city of S.Has been requested; in letter No. 115-01-701 of 07.05.2007, the Head of the Regional Inspectorate on Education S. has stated that XXXX School Principal "has not received written and/or verbal Order from me, banning girls with headscarfs to attend school classes".

As evidence, the School Regulations of XXXX High School in the town of D. are attached. The School Regulations determines the structure, functions and management of the institution, teachers' and students' rights and responsibilities, the organization of academic work and curricula. Chapter III, Section I of the Regulations ordain teachers' and trainers'

activities in the training; Article 36, Paragraph 1 indicates that complete integration of students in school and social environment shall be aimed.

The first open hearing on the case file was held on 20.07.2007.

In their capacity of complainants, R.K.S. and W.A.S. have been constituted; F.K.C. did not appear and was not represented.

In their capacity of the defendant, the Principal of XXXX High School in the town of D., V.S.V.. and T.P.P., Head of the Regional Inspectorate on Education with MES, city of S., have been constituted.

On the first hearing on the case file, the Specialized Permanent Sitting Panel has provided to Parties a chance to reach agreement by virtue of Article 62, Paragraph 1 of the Protection from Discrimination Act.

The Parties expressed willingness to reconcile and on 16.08.2007, written agreement was lodged with the Commission under No. 19-00-889. The Agreement reads that Parties made "unanimous decision to solve all disputed issues covered in the complaint, to promulgate official legal act that does not contradict to this agreement".

The Ad Hoc Sitting Panel considers that the agreement is incomplete and unclear; thus, it scheduled a second open hearing, held on 24 October 2007. On it, the three complainants have been summoned, of who only R.K.S. appeared in person. In their capacity of defendant, the Principal V.V. and the Regional Inspectorate Head R.J. appeared. The representative of XXXX Association, I.A.D. and the B.H.C.member, R.M.K. were constituted as witnesses.

Complainant R.S. upheld the request for "dropping of warnings addressed by Mr. P. to the Principal ... the verbal instruction that students wearing headscarfs shall be banned from school classes." The schoolgirl wanted to graduate the selected school and declared that currently she attended school with headscarf (page 3, Record of open hearing of 24.10 2007).

In capacity of defendant appeared R.J., as the Head of Unit in Regional Inspectorate on Education with Ministry of Education and Science in the city of S. She advised that in such cases, the Regional Inspectorate followd the legal framework and Decision No. 37 of 2006, enacted by the Commission for Protection against Discrimination.

Concerning the allegations that the Regional inspectorate S. has commented the school dress code, Mrs. R.J. clarified, "that was on-the-spot survey pursuant to the monitoring over Decision No. 37/2006 of the CPD and pursuant to media coverage for students who attended school wearing headscarfs in S. region. Before the survey, the Regional Inspectorate on Education in S. was unaware that on the territory of S. District S. there are other schools, besides the one concerned in Decision No. 37/2006 of the CPD. The check-up has established infringements in five schools on the territory of S. District. The Inspectorate has focused "Principals' attention to the fact that the national legal framework and School Regulations stipulate that all shall be equal." Following conversations between Regional Inspectorate on Education officials and school Principals, XXXX Hogh School including, S.V. "agreed that schoolgirls would attend school without headscarfs and wear whatever attire they preferred outside school" (page 5, Records of the open hearing on 24.10 2007).

V.V. as XXXX High School Principal explained that two lady complainants, studying currently at 11th grade, have only recently started to wear headscarfs, in the past academic year.

Surveying the presented by the parties agreement, the Specialized Permanent Sitting Panel established that essential agreement has not been reached, therefore the case shall be considered in essence, (page 7, Records of the open hearing on 24.10.2007).

Considering the investigation findings, collected written and verbal evidence, the AD HOC Panel of the Commission for Protection against Discrimination established the following:

School Regulations of XXXX High School in the town of D. do not impose compulsory uniform for students during classes. The young lady complainants attend school classes regularly and are have not been banned to do it by V.S.V, XXXX High School Principal and T.P.P., Head of the Regional Inspectorate on Education in S. Approximately a year ago, R.K.S., F.K.C. and U.A.S. started to attend school classes wearing headscarfs.

Considering the established factual context, the Ad Hoc Panel made the following legal conclusions:

The procedure term shall be determined from the date of referred facts and circumstances to the moment of termination of the proceedings. In that manner, the Ad Hoc Sitting Panel has established that Parties' opinions and collected written and verbal evidence shall be analyzed by virtue of Article 9, PfDA, envisioning the shared burden of proof. On that ground, the Panel has established as undoubtedly proven that lady complainants' right to education has not been breached and their chance to attend school classes hasn't been limited. On the alleged possible necessity "compelling them to take their headscarfs down if such Order was ordained" was declared unproven by the Panel, since it was not supported by the rest evidences. Furthermore, in the course of proceedings it was established that lady complainants regularly attended school classes wearing headscarfs. Their behaviour hasn't violated the Rules for organization and the training process at XXXX High School at the town of D. That conclusion is supported by the explanations delivered by the Principal V.V., stating that the complainants are excellent students, have no unjustified absences and have not been banned to attend school classes on any occasion. That is supported by the complainant R.S., who stated that she studied at XXXX High School from three years and she hadn't faced any difficulties from teachers and classmates. Her choice to attend school classes with veiled hair was made during the last academic year, one year before lodging of the complaint. Her choice had no negative consequences against her, e.g. different treatment or breaching of her right to education by the Principal V.V. and the Head of the Regional Inspectorate on Education T.P. The other two complainants have evidenced the same. The explanations delivered by the witness R.M.K. who then declared to be defendant of the complainant R.S., cannot be perceived as witness evidences and relevant proofs. The evidences of witness I.D. proves that lady complainants attended school classes wearing headscarfs and that did not impede their normal participation in the training process. All those conclusions evidence that the complaint is unjustified and shall be left without consideration.

The legislative framework leaves it up to School Boards to decide whether to introduce uniform dress code for students. In XXXX High School such requirement has not been introduced. Therefore, the Ad Hoc Panel considers that the defendants.V.S.V., XXXX High School Principal and T.P.P., Head of the Regional Inspectorate on Education in S., have not breached the Protection from Discrimination Act with their actions.

The right to education is guaranteed by the Constitution of the Republic of Bulgaria. It is a fundamental civil right and the State shall provide necessary circumstances and guarantee it. That duty refers for all Bulgarian citizens and cannot and should not be restricted in any way. In Bulgaria, education is secular, as stipulated in Article 5 of the Public Education Act and Article 4 of the Rules for Application of the Public Education Act. Those provisions do not alow imposing of ideological and religious doctrines. However, unsettled remains the issue whether wearing of religious symbols in education facilities, where compulsory uniform has not been introduced, breaches the secular essence of education. On the other hand, freedom of denominations in the Republic of Bulgaria is guaranteed by the Constitution, too.

Religions shall be free and equal in rights. Religious institutions shall be separated from the state, as promulgated in the explicit provision of Article 4 of the Denominations Act. Religious institutions are separated from the State and interference by the State in the internal organization of religious communities and institutions shall be inadmissible. The right to denomination and manners to form and express religion convictions are stipulated in Article 5 and Article 6 of the Denominations Act. The limitation of freedom of denomination can pursue only from danger for national security, public order, health or morals, and when it is detrimental to the rights and freedoms of others. Those provisions require clarification and finding a balance between the right to education and the right to belief. The question if there is a collision between wearing religious symbols as part of certain belief collision the secular education in collision arises. Since there is no legal framework regulating public relations, secular nature of education and wearing of religious symbols, the Ad Hoc Panel considers compelled the powers of the Commission for Protection against Discrimination by virtue of Article 47, point 4, 6 and 8 of the Protection from Discrimination Act:

Recommends to the Minister of Education and Science to conduct overall analysis of Bulgarian education system in the context of antidiscrimination legislation and freedom of denominations.

Ordains mandatory instruction to the Minister of Education and Science to exercise its legal powers and approximate the normative framework in compliance with the antidiscrimination legislation and freedom of denominations.

Considering the above stated and by virtue of Article 65, point 5 in conjunction to Article 66, Article 47, point 4, 6 and 8 in conjunction to Article 76, Para 1, point 1 of the Protection from Discrimination Act, the AD HOC Panel of the Commission for Protection against Discrimination,

DECIDED

ESTABLISHES that V.S.V.. - Principal of XXXX High School in the the town of D. and T.P.P. – Head of Regional Inspectorate on Education in the city of S. have not performed an infringement of the Protection from Discrimination Act.

DISREGARDS the complaint of R.K.S., F.K.C. and U.A.S. from the village of G., the municipality of D.

RECOMMENDS to the Minister of Education and Science to conduct overall analysis of Bulgarian education system in observance of the antidiscrimination legislation and freedom of denominations.

ORDAINS mandatory instruction to the Minister of Education and Science to exercise its legal powers and approximate the normative framework in compliance with the antidiscrimination legislation and freedom of denominations.

DETERMINES a period of one month for the Minister of Education and Science to undertake actions in implementation of delivered Recommendation and Mandatory Instruction and to notify Commission for Protection against Discrimination about them.

PARTICULAR OPINION of the rapporteur Esen Fikri

The complainants R.K.S., F.K.C., U.A.S. are schoolgirls at XXXX High School in the town of D. They confide that their families have brought them in the spirit and values of Islamic religion. As Muslim believers and on their own conviction, after 8th grade they chose to put headscarfs. They went to school wearing headscarfs, since in their school there was no uniform or dress code, while the other students attended school classes dressed in "every possible style…" They grieve that on 23 February 2007, on verbal order by the Head of Regional Inspectorate on Education from S., the Principal V.V. summoned them in his office and warned them that they might have to take the headscarfs off, if such Order was ordained. Lady complainants consider the warning to be discriminatory and that if such Order was decreed, it would deprive them of their right to education.

Evidence indicate that no written Order banning school attendance with headscarfs has been issued for from XXXX High School Principal, nor by the Head of the Regional Inspectorate on Education in S. Thus, there isn't less favourable treatment on the ground of religion or belief by virtue of Article 4, Para 2 of PfDA, nor putting anyone in less favourable position on the ground religion or belief by virtue of Article 4, Para 3 of PfDA.

As evident from written explanations of V.V., XXXX High School Principal, filed at the CPD under No. 19-00-863 of 16.05.2007, he recognized that by instruction of the Head of the Regional Inspectorate on Education with the Ministry of Education and Science in the city of S., he warned the three schoolgirls that of a formal Order was decreed, they might be compelled to take the headscarfs off. He states that such Order has not been issued and the schoolgirls continued to wear headscarfs at school. When asked for that verbal instruction, the Head of Regional Inspectorate on Education with Ministry of Education and Science could not provide further details in his written explanations, filed with the CPD under No. 15-01-701 of 07.05.2007. He did not confirm, nor deny to have instructed the Principal on possible Order banning school attendance wearing headscarfs. At the open hearing on 24.10.2007, the Regional Inspectorate on Education with Ministry of Education and Science was represented by R.J.J., Head of Unit in Regional Inspectorate on Education city of S. Summary of her opinion (pages 4-5 and 20 of the Records of 24.10.2007), reads: "The Regional Inspectorate on Education in S. applies the domestic legal framework in the context of Decision No. 37 of 2006 of the Commission for Protection against Discrimination, which refers to similar case (in her opinion). The investigation, conducted by the Regional Inspectorate on Education after the delivery of the Commission's Decision No. 37 of 2006 established that in the region of S. there were five other schools, besides rge one referred in the decision, where schoolgirls attend classes with headscarfs. The Regional Inspectorate on Education representative stated that by virtue of Article 5 of the Public Education Act and Article 4 of the Rules for Application of the Public Education Act and considering Decision No. 37 of 2006 of the CPD, education is secular and everyone is equal. According to the Regional Inspectorate on Education, (page 5 of Record of 24.10.2007 paragraph one), observance of the existing legislative framework provides two alternatives for affected persons (Muslim students wearing headscarfs): to attend school school without headscarf or to urge the pedagogical council to impose the regulations of the Public Education Act, the Rules for Application of the Public Education Act and the School Regulations. Thus, according to Regional Inspectorate on Education in the city of S., the legislative framework does not allow school classes attendance with headscarfs, in the opinion of the Regional Inspectorate on Education, such display of religious beliefs consitutes infringement of the Public Education Act, the Rules for Application of the Public Education Act and urges the pedagogical councils to take certain sanctions against veiled schoolgirls. On the findings of the on-the-spot survey at schools attended by students wearing headscarfs, which according

to the Regional Inspectorate on Education in the city of S. constitutes infringement of the Public Education Act. The Regional Inspectorate on Education in the city of S. drew the Principals' attention on the two abovementioned options. At one school - Secondary School XXXX, - an agreement was reached that schoolgirls shall attend school without headscarves. Thus, the Regional Inspectorate on Education reckons that it wasn't necessary to give verbal instruction or formal Order banning religious symbols at school.

From the explanations of V.V., XXXX High School Principal in the town of D., delivered at the open hearing on 24.10.2007, the Regional Inspectorate on Education has stated that according to the national legislative framework, education is secular and no one shall attend school wearing religious symbols, e.g. headscarfs. He didn't recall a specific prohibition for wearing of headscarfs at school; however, he spoke to the schoolgirls and tried to explain that secular nature of education might force them to take headscarfs down when going to school. That conclusion is confirmed by the statements of the RIE representative for agreement reached at the Secondary School XXXX S.V. After discussions between the School Board and the schoolgirls, V.V. stated: "The Ministry has to issue an order, listing banned symbols; the girls might be forced to become private students, as happened an year ago at S." (Records of 24.10.2007, page 17). Yet, the Principal V.V. chose to bypass RIE instruction and let complainants attend school wearing headscarfs, because he did not want to breach their right to education and to facilitate their graduation at the preferred school. The Principal of XXXX High School at the town of D. litigated that the teachers have never treated the complainants worse for their choice to wear headscarfs.

The Regional Inspectorate on Education undertook check-up at all schools in the districts to establish if there were other schools, besides the one referred to in Decision No. 37 of 2006 of the CPD, where secular education provision was breached; however, as evident from the explanations, not all religious symbols but only headscarfs worn by Muslim women are referred to. Undoubtedly, the Regional Inspectorate on Education in the city of S. considers that observance of the legislative framework refers only to headscarfs. ("… let them attend school without headscarfs, like the others…" – page 5 of the Records), and the failure to obey shall force the Pedagogical Council to exercise its powers.

Undoubtedly, after the RIE check-up, the Principals of the five schools, XXXX High School Principal the town of D. including, have been instructed to observe the normative framework; as example, the experience of Secondary School XXXX is presented, where agreement was reached, that schoolgirls shall attend school without headscarfs. XXXX High School Principal, however, was not convinced in the interpretation of legislative framework as delivered by the Regional Inspectorate on Education.

In that sense, I do not share the opinion of the Ad Hoc Panel that complainants' allegation concerning the warning for taking headscarfs down was ungrounded. On the contrary, the allegation is undoubtedly proven, it is not denied by XXXX High School Principal or by Regional Inspectorate on Education in S., whose official spoke of inadmissibility of headscarfs in school and suggested two options – to attend school unveiled or to be subjected to sanctions imposed by the pedagogical council. The Principal's warning to the three complainants ensued from the so-called "focusing principals' attention" on Article 5 of the Public Education Act, Article 4 of Rules for Application of the Public Education Act, Article 11, Paragraph 2 of the Child Protection Act and Decision No. 37 of 2006 of the CPD. The Regional Inspectorate on Education considers unnecessary to issue an Order instructing School Principals to apply the Act. Undisputedly, schoolgirls continue to attend school with headscarfs and no measures have been undertaken against them, however, they felt threaten by a possible Order banning wearing of headscarfs at school, which was against their religious beliefs and in fact could prevent them to graduate the selected school.

At the first hearing, the CPD has suggested to parties to reach reconciliation. In the foreseen deadline, a draft agreement between lady complainants and XXXX High School Principal the town of D. has been delivered, where the parties agree: "We unanimously agree to take down all disputed issues, mentioned in the complaint, by the promulgation of official act in approximation of the reached agreement." The Panel considered those formulations to be incomplete and inclear; second open hearing was scheduled for 24.10.2007. The Panel sought parties' opinions and established that lady complainants want to keep on attending school with headscarfs and to complete their education. The Regional Inspectorate on Education representative stated that the normative framework bans complainants' pretences; while the School Principal does not take firm position and states that after additional discussions, agreement with lady complainants might be reached. That motivated the Ad Hoc Panel to reckon that reconciliation between Parties has not been reached, resulting in consideration of the dispute in essence.

Parties do not dispute that the complainants are Muslims, raised by their families to observe their religious customs and to wear headscarves as a Muslim symbol. In this case, we cannot speak of radical Islamic fundamentalism that would have contradicted the secular state norms, as regulated by the Constitution - Article 13. Wearing of headscarf is dictated by the Islamic religion and the Qur'an. In Muslim tradition, women cover their beauties to protect their chastity, as witness D. Evidenced. According to his explanations, religious doctrine calllady believers to cover their hair and body outside their family and relatives' circle. Nowadays, headscarf is worn, covering hair and exposing face.

Undisputedly, the School Regulations of XXXX High School the town of D. has not introduced compulsory uniform and students attend classes dressed according to their own style, conviction and views, as far as the dress code reflects their essence. That circumstance excludes the analogy to Decision No. 37 of 2006 of the CPD, concerning another school where compulsory uniform existed.

Considering that there is no official Order for taking headscarfs down and that lady complainants continue to attend school wearing headscarfs, one should investigate if the warning to complainants for taking their headscarfs down on the formal ordainance of such Order constituted discrimination.

By virtue of Article 4, Para 2 of PfDA, discrimination is less favourable treatment on the grounds listed in Article 4, Para 1 of PfDA; by virtue of Article 4, Para 3 of PfDA discrimination is to put a person in less favourable position on the grounds listed in Article 4, Para 1 of PfDA. Obviously in that case, the lack of Order prohibiting school attendabce with headscarfs could not be considered as less favourable treatment or putting someone in less favourable position on the ground of belief.

However, by virtue of Article 5 of PfDA harassment on the grounds by virtue of Article 4, Para 1 of PfDA is considered to be discrimination. Harassment by virtue of §. 1, point 1 of PfDA Supplementary Provisions is every unwanted conduct on the grounds of characteristics under Article 4, Para 1 of PfDA and expressed physically, verbally or in another way targeting at or resulting in offending the dignity of an individual and creating hostile, offensive or impending environment. The warning to to lady complainants is verbally expressed and unwanted bby them conduct. That verbally expressed conduct is based on the grounds of Article 4, Para 1 of PfDA – belief in certain religion. Even if the warning did not target to offend their dignity, i.e. their perception for their right to belief and their right to education, since the right to education is unlimitated fundamental right, fulfilled in selected school according to personal preferences and opportunities, regardless of race, nationality, sex, ethnic and social origin, denomination and social status (Art. 4 and Article 9 of the Public Education Act). The Convention against Discrimination in Education, ratified with Decree No. 508 dated 17.11.1962, bans discrimination in education, as transposed in the

provisions of Article 4, Para 2 of the Public Education Act, No discrimination or privileges based on considerations of race, nationality, sex, ethnic or social origin, religion and social status shall be permitted

. By virtue of Article 2 of the Facultative Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, no one shall be deprived from the right to education. The warning has created hostile environment for lady complainants, since they feared of such prohibition was enacted, they would not have the chance to complete selected education. Considering above stated and considering the warning referring not to all signs, objects or attributes demonstrating individual's belief and religion, but only to headscarfs as a Muslim symbol, revealing double standards for different religions, has motivated my particular opinion that in this case that there is discrimination in the form of harassment by virtue of Article 5 in relation to § 1, point 1 of PfDA Supplementary Provisions. In that sense, the complaint is justified and infringement of Article 4, Para 1 in conjunction to Article 5, provision 1 established; recommendations for termination of the infringement and future refraining from committing of similar infringement shall be given to the Regional Inspectorate on Education in the city of S..

By virtue of Article 6, Paragraph 2 of the Constitution of the Republic of Bulgaria, All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status. That fundamental principle is further developed in norms regulating fundamental rights and obligations of citizens, e.g. in Article 37, Paragraph 1, *The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers*. That fundamental right is proofed with Article 38, Paragraph 1 of Constitution, *No one shall be persecuted or restricted in his rights because of his views, nor shall be obligated or forced to provide information about his own or another person's views.* By virtue of Article 37, Paragraph 2 stipulates that the freedom of conscience and religion shall not be practised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others. The aim of that provision is to establish, to define the limits of restraint, respectively for exercising of rights, the right to denomination and apparel as expression of religious beliefs, including.

Education is secular, as stipulated in Article 5 of the Public Education Act and Article 4 of the Rules for Application of the Public Education Act, banning imposing of ideological and religious doctrines at school; in secular schools however religion is taught in the program for mandatory or supplementary extra-curricular classes. Thus, I do not believe that wearing of headscarfs at school equals to subjecting students to ideological and religious doctrines. There is no evidence showing that the outer expression of belief has affected or offended the rights of other students in the School, who were free to attend school dressed according to their views and style, or that it has threatened national security, public order, public health and morals.

By virtue of Article 26, point 2 of the Universal Declaration of Human Rights, *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.* Those principles are repeated by the domestic legislation, by virtue of Article 1, point 5 of Rules for Application of the Public Education Act public education system lays the foundations of continuing education of citizens, ensuring raising of a free, morale and innovative individual, who as Bulgarian citizen shall respect the laws, other's rights, language, religion and culture.

The warning to the lady complainants reveals unequal approach to belief outer expression and therefore breaches the above-mentioned non-discrimination principles.

Section VI

Discrimination on the grounds of disability

25. Decision No. 31 of 11.07.2006 of the CPD Nine-member Full Panel[38]

Accessible architecture environment for persons with disabilities
Art. 5 , Article 40, Article 47, Para 8, Article 50, point 2 of PfDA
§ 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act
Regulation No. 6 of 26.10.2003 for construction of accessible environment in urban territories

The imperative norm of § 6 of Transitional and Final Provisions of the Integration of Persons with Disabilities Act obliges governmental and municipal authorities to provide by 31.12.2006 free access for persons with disabilities to public buildings and equipment. Non-implementation of that duty in the legitimate deadline would result in occurrence of discrimination by virtue of Art. 5, last provision of PfDA, urging the Commission for Protection against Discrimination to take preventive measures and deliver recommendations to liable subjects for adjustment of architecture environment to the needs of persons with disabilities and free access to public buildings.

The proceedings is initiated by virtue of Article 50, point 2 of the Protection from Discrimination Act (PfDA) in conjunction to Article 8, Paragraph 1 of the Rules for Proceedings before the CPD.

Initiated on report of Aneli Chobanova, Commission's Member, registered under No. 00/22.06.2006 at the Commission's Records. The Commission is referred to survey the approaching deadline for provision of free access for persons with disabilities to public buildings and equipment, state and municipal property, as stipulated in § 6 of the Transitional and Final Provisions of the Integration of People with Disabilities Act, and to correct the inaccurate quoting of the Law on the Protection, Rehabilitation and Social Integration of Invalids, repealed with the Integration of Persons with Disabilities Act, in § 3 of Regulation No. 6, Transitional and Final Provisions for construction of accessible environment in all urban territories of Bulgaria, issued on 26.10.2003 by the Ministry of Labour and Socail Policy (MLSP) , the Ministry of Agriculture and Forests (MAF), the Ministry of Regional Development and Public Works (MRDPW) and the Ministry of Healthcare (MH).

In her report, Mrs. Chobanova alleges that:

Firstly, references to the Law on the Protection, Rehabilitation and Social Integration of Invalids is incorrect and illegitimate, considering the adopted new Act, i.e. the Integration of Persons with Disabilities Act, which by the date of its entry into force on 01.01.2005 amended the previous one and adopted new terminology, replacing the term "invalid" with the term "person with disabilities". That inaccuracy probably stems from the failure to approximate sub-legal norms in accordance with the new Act. The Commission is requested to exercise its powers under Article 47, Para 8 of PfDA and deliver recommendations to the authors of Regulation No. 6 for constructing accessible environment in urban territories, and amending § 3 of the Transitional and Final Provisions to the Regulation.

Secondly, § 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act obliges central and municipal governments by 31.12.2006 to ensure free access for persons with disabilities to public buildings and equipment that are state and municipal property. The Commission is requested to exercise its powers by virtue of Article 47 in conjunction to Article 5 and Article 40 of PfDA and deliver Recommendation to the

[38] Decision has entered into force .

respective competent authorities and officials for timely adjustment of imperative provisions within envisioned deadline.

At its Board Meeting on 11 July 2006, the Commission for Protection against Discrimination in Full Nine-Member Panel considered evidences produced by Mrs. Chobanova and established the following:

Firstly, the norms regulating accessibility and construction of appropriate architecture environment in Bulgaria are summarized in the Integration of People with Disabilities Act and the Territory Planning Act; being also transposed in PfDA. By virtue of those two acts, Regulation No. 6 of 26.10.2003 for Construction of Accessible Environment in Urban Territories has been drafted and enforced. It is ordained by the Ministry of Regional Development and Public Works, the Ministry of Agriculture and Forests, the Ministry of Labour and Social Policy and the Ministry of Healthcare and is in force since 17.01.2004. Under the Law on Normative Acts, the reason to ordain such Regulation is stipulated in the Transitional and Final Provisions of the Act. Paragraph 3 of the Transitional and Final Provisions of the Regulation point Article 107, point 5 and Article 169, Paragraph 3 of the Territory Planning Act, but also a reference is made to Article 27, point 2 of Law on the Protection, Rehabilitation and Social Integration of Invalids, at present abolished by the Integration of Persons with Disabilities Act. The two instruments are of equal legal power, although the Territory Planning Act can be considered as general compared to the Integration of Persons with Disabilities Act. The Territory Planning Act was adopted in 2001 and although endorsed under that title in 2003, in fact it is older legal instrument, as compared to the Integration of Persons with Disabilities Act, which was adopted in 2004 and in force since 01.01.2005. Its Transitional and Final Provisions state that the Act shall repeal the Law on the Protection, Rehabilitation and Social Integration of Invalids. The Integration of Persons with Disabilities Act introduced a new term to substitute “invalid”, i.e. “person with disabilities”.

Regulation’s authors made reference to the older Act provisions, quoting correctly its new title, Territory Planning Act, instead of the previous, Law on Territorial Settlement Planning. The reference to the Law on the Protection, Rehabilitation and Social Integration of Invalids, however, is incorrect and illegitimate, considering the amended act and adopted new terminology. That probably because since its entry into force, Regulation No. 6 ordained by the Ministry of Regional Development and Public Works, the Ministry of Agriculture and Forests, the Ministry of Labour and Socail Policy and the Ministry of Healthcare, has not been up-to-dated. Thus, referring to Article 27 of the Law on the Protection, Rehabilitation and Social Integration of Invalids is irrelevant.

Secondly, § 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act obliges state and municipal autorities to provide free access for persons with disabilities to all public buildings and equipment by 31.12.2006, latest.

Convinced that preventive measures, stipulated in Article 40 of PfDA, shall to be applied in this case, the Commission for Protection against Discrimination, independent specialized state authority for prevention of discrimination, protection against discrimination and ensuring equal opportunities, in the the meaning of § 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act oblige the Commission to exercise its powers by virtue of Article 47 in conjunction to Article 40 and Article 5 of PfDA and deliver recommendations to the respective bodies, envisioned in the Integration of Persons with Disabilities Act and Territory Planning Act.

In relation to above stated and by virtue of Article 47, point 10 of PfDA and Article 7, point 2 of Rules for Organization and Activities of the CPD, Prom. SG, issue 57 of 2005, amended SG, issue 54 of 4 July 2006), the Commission for Protection against Discrimination established: there is incongruity in § 3 of the Transitional and Final Provisions of Regulation No. 6 of 26.10.2003 for constructing accessible environment in urban territories and the

Integration of Persons with Disabilities Act, an act promulgating equal treatment of persons with disabilities in Bulgaria; the imperative norm of § 6, Transitional and Final Provisions of the Integration of Persons with Disabilities Act, envisions deadline of 31.12.2006, for implementation of prescribed actions, namely provision of free access for persons with disabilities to public buildings and equipment that are state and municipal property. The failure to implement that provision by the respective authorities shall result in legal consequences, envisioned in Article 5 of PfDA.

Led by the aforementioned considerations and by virtue of Art.40 in conjunction to Article 47, Para 4 and Article 47, Para 8 of PfDA in conjunction to Article 25 of Rules for Organization and Activities of the CPD, the Commission for Protection against Discrimination,

DECIDED

RECOMMENDS to all Ministers, District Governors, Municipal Councilors, Mayors of municipalities, regions, and settlements, and all Deputy Mayors, to take the necessary measures for adjustment of architecture environment of buildings under their governance, by virtue of § 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act, and to provide funding and resources for the provision of free access for persons with disabilities to those buildings.

DETERMINES within one month since the Recommendation delivery, when addressee shall notify the CPD for the measures undertaken in its implementation.

Recommends to the Minister of Labour and Social Policy, Minister of Agriculture and Forests, Minister of Regional Development and Welfare and the Minister of Health of the Republic of Bulgaria, to amend § 3 of the Transitional and Final Provisions of Regulation No. 6 for Construction of Accessible Environment in Urban Territories (published on 26.10.2003 and in force since 17.01.2004) it its part referring to repealed texts in the Law on the Protection, Rehabilitation and Social Integration of Invalids, in accordance with the actual domestic legislation gruaranteeing the rights of persons with disabilities.

Those instructions and recommendations shall be delivered to their addressees for advice and implementation.

The instruction to Municipal Councils and Mayors shall be delivered through the District Governors of the respective regions.

26. Decision No. 10 of 06.03.2007 on case file No. 96/2006 of the CPD Fifth Specialized Permanent Sitting Panel[39]

Discrimination on the ground of disability
Art. 9, Article 40, Paragraph 1, Article 47, Para 2 and Article 62, Para 2 of PfDA
Art. 42 of the Integration of Persons with Disabilities Act and Article 3 of Section III of Supplementary Provisions of the Integration of Persons with Disabilities Act
Art. 16 of Rules for Application of the Social Assistance Act
CoM Decree No. 52/29.03.2005

[39] The Decision has entered into force.

The complainant V.P.V. is a person with permanently decreased employability – 95 per cent, with right to personal assistant. However, he lives alone and does not use the service "personal assistant"; disability living allowance ("integration allowance") by virtue of Article 42 of the Integration of People with Disabilities Act and a pension have been allotted to him. The complainant lodged a request for targeted cash benefit for electricity heating with the Social Assistance Directorate (SAD), which was considered and approved. In 2004 the Social Assistance Directorate in the town of B. issued an Order terminating that benefit. The motives were: "His incomes for February 2005 exceed the differentiated minimun income for heating". The calculation of his incomes, however, included his integration allowance by virtue of Article 42 of the Integration of Persons with Disabilities Act, which under CoM Decree No. 52/29.03.2005 shall not be considered as income.

By virtue of Article 62, Para 2 of PfDA between the complainant V.P.V. and Social Assistance Directorate in the town of B., agreement has been contracted, entitling V.P.V. to a targeted cash benefit by virtue of Article 16 of the Rules for Application of the Social Assistance Act, to help him meet his needs. The agreement has been approved by the Commission's Specialized Panel, since it hase reached the aim of PfDA

The case file is initiated on complaint registered under No. 861/28.06.2006, lodged by virtue of Article 50, point 1 of PfDA of V.P.V. of town of B. By Order of the Commission's Chairman No. 262/11.07.2006, proceeding on the ground of disability has been initiated.

Mr. B. complaint is aimed against Social Assistance Directorate (SAD) in the town of B., a regional office of the Social Assistance Agency. Complaint's subject is the calculating method of complainant's minimun income in Order No. XXX/X.X.2005, which terminated his allowance for electricity heating, and deprived him from one-time social allowance for medications.

The Commission for Protection against Discrimination is approached to help the complainant "tackle contradictions" between him and the Social Assistance Directorate in the town of B.

As evidences, by virtue of Article 9 PfDA, Order No. XXX/X.X.2005 of SAD and the official reply from the same directorate No. X-X/X.X.2006, refusing one-time social allowance, have been produced. Also, Decision of the Labour-Expert Medical Commission (LEMC) No. X/X.X.2005 has been produced; official notice for rent earnings amounting to BGN 53,72 for agricultural year 2005-2006, received by the complainant; certificate from the National Social Security Institute allotting personal disability pension amounting to BGN 163.90; complainant's request to the Social Assistance Directorate in the town of B., and a social report.

The complainant alleges that in 2005 he has been denied of one-time aid for purchasing medicines for BGN 200. In April 2005, his allowance for electricity heating has been terminated. He grieved that when calculating his minimun income, his disablility living allowance has been summed, as well. That constitutes infringement of Art.3, Section III and the Supplementary Provisions of the Integration of People with Disabilities Act.

From the evidences produced, the following was established:

Complainant V.P.V. is a person with permanently decreased employability due to multiple sclerosis and other diseases. As evident from Decision No. X/X of X.X.2005 of the Labour-Expert Medical Commission ("LEMC"), quoted in the document provided by the defendant, Social Assistance Directorate in the town of B., as well, V. has 95% permanently decreased employability; he is a pensioner entitled to personal assistant. He lives alone and does not benefit from the "personal assistance service". As person with permanently decreased employability, he receives integration allowance by virtue of Article 42 of the

Integration of Persons with Disabilities Act, amounting to BGN 28.00 and a pension amounting to BGN 90.10.

On X.X.2004, the complainant lodged a request with the Social Assistance Directorate in the town of B., for allocation of targeted cash benefit for electricity heating and his request has been satisfied, as of X.X.2004 with Order No. XXX/X.X.2004. By Order No. XXXXX/X.X.2005 of the Social Assistance Directorate in the town of B., that allowance has been terminated. The reason is the Directorate's social report, stating that "His incomes for February 2005 exceed the differentiated minimun income for heating." The Order concludes that Mr. B. does not meet the conditions of Regulation No.5/30.05.2003, Art.6. As evident from the enclosed methodology to calculating differentiated minimun income, provided by the Social Assistance Directorate in the town of B., estimations include the integration allowance by virtue of Article 42 of the Integration of Persons with Disabilities Act, amounting to BGN 28.00, which by Council of Ministers Decree No.52/29.03.2005, promulgated in SG, issue 31/08.04.2005, shall not be considered as income. Considering that the Order has been delivered on 08.04.2005 to V., it could bot be handed or by virtue of the Administrative Procedure Code shall be withdrawn. In fact, the complainant V. has been deprived by his legitimate targeted cash benefit for the 2005 heating season.

Regarding the allocation pof one-time allowances, the replies of the Social Assistance Directorate in the town of B. and the Minister of Labour and Social Policy evidence that their allocation and amount are settled in the Rules for Application of the Social Assistance Act and are allocated on the basis of a social report, drafted at certain incidental circumstances. In that sense, it is not clear if such incidental need of medication amounting to BGN 200 has occurred for the complainant V., or it was part of his usual therapy. No evidence supporting his allegations has been produced.

At the hearing, the complainant was represented by his sister S.P.T., who is authorized to do so. Arguing parties produced signed agreement to the Sitting Panel and expressed their will for its endorsement in the Commission's decision, under Article 62, Para 2 of PfDA. The defendant proved his will for agreement with those evidences: social report of X.X.2007 from Social Assistance Directorate – B. for targeted cash benefit to V.P.V. amounting to BGN 100, with due explanation; Order No. the Rules for Application of the Social Assistance Act 389/16.01.2007 of Social Assistance Directorate in the town of B. for allocation of the above cited benefit and permanent labour contract No. X/X.X.2007 between Social Assistance Directorate in the town of B. and complainant's sister S.P.T., appointed as "home-based nurse" as of 31.12.2007, by virtue of Article 68, Paragraph 1, point 2 in relation to point 1 of the Labour Code.

In essence, the agreement between parties reads:

1. *As of 20.01.2007, the Social Assistance Directorate shall provide "personal assistance" social service to V., a disabled person, whose sister S.P. shall be appointed on permanent labour contract as "personal assistant", under the National Program "Assistants for Persons with Disabilities". She will care only for V. Copy of the labour contract shall be presented to the Commission for Protection against Discrimination.*

2. As of 20.01.2007, SAD shall allot targeted cash benefit to V. by virtue of Article 16 of the Rules for Application of the Social Assistance Act, to meet his urgent needs – food and apparel. The beneficiary shall produce proofs of payment to the SAD.

At the open hearing, Fifth Specialized Permanent Sitting Panel verified whether the agreement was equally satisfactory for the two arguing parties. Parties have expressed goodwill for reconciliation and termination of further proceeding on case file No. 96/06 from CPD register.

Fifth Specialized Permanent Sitting Panel has established that with sofar reached agreement has reached the aim of Protection from Discrimination Act, namely to restore the

initial situation, when based on the equal treatment principle (Article 47, Para 2 of PfDA) and considers that it shouldn't be a palliative measure, but authority's actions in future should be consistent to the normative framework and also to V.P.V. health and social status.

Considering above stated and by virtue of Article 62, Paragraph 2 in conjunction to Article 40, Paragraph 1 of PfDA, Fifth Specialized Permanent Sitting Panel of the Commission for Protection against Discrimination,

DECIDED

APPROVES presented AGREEMENT of 12.01.2007 between the Social Assistance Directorate in the town of B. to the Agency on Social Assistance, Sofia – on one hand, and V.P.V. of town of B., on the other.

RECOMMENDS to the Social Assistance Directorate in the town of B., to consider in its future steps and developemts on V.P.V. not only the legal framework but also beneficiary's health and social status.

TERMINATES the proceedings on case file No. 96/06 of the Register of the Commission for Protection against Discrimination.

This decision shall be delivered to the Social Assistance Directorate in the town of B., and to V.P.V. for advice and implementation.

This Decision is not liable to appeal.

27. RECOMMENDATION dated 14.11.2007, on case file No. 60/2007 of the Commission for Protection from Discrimination, Nine-Member Panel [40]

Discrimination on the grounds of disability
Article 13 of the Treaty establishing the European Community
Directive (95/16/EC)
Art. 1, Article 40, Paragraph 1, Article 47, point 6 and point 8 of PfDA
Art. 34 and Article 38, p. 2 of the Integration of People with Disabilities Act and § 6 of the Transitional and Final Provisions to the The Integration of People with Disabilities Act
Regulation concerning the Transportation of Passengers and Conditions for Traveling in the Urban Mass Transportation on the Territory of the Metropolitan Municipality (adopted by Decision No. 36 under Protocol No. 8/14.03.2000, last amended by Decision No. 835/09.11.2006**)**

The persons with disabilities shall be able to use the transportation services of the urban mass Transportation in a way, accessible to them, and they should have the opportunity to use specific places for handicapped persons in transportation vehicles (trams, buses, trolleybuses), to be provided by the competent institutions, so that their possibilities become equal to the ones of people with no disabilities, when using the service "urban transportation".

[40] Unappealed.

Pursuant to Article 47, point 6 and point 7 in conjunction with Article 40, paragraph 1 PfDA.

The Commission for Protection against Discrimination considered a report, introduced by Ass. Prof. Blagoy Vidin. The report contains a suggestion to the Commission, to exercise its power pursuant to Article 47, point 6 and point 8 of the Protection from Discrimination Act concerning addressing a recommendation to the Metropolitan Municipality and the Metropolitan Municipal Council to amend and supplement the Regulation concerning the Transportation of Passengers and Conditions for Traveling in the Urban Mass Transportation on the Territory of the Metropolitan Municipality (Adopted by Decision No. 36 under Protocol No. 8/14.03.2000, updated by Decision No. 24 under Protocol No. 19/11.12.2000, Decision No. 3 under Protocol No. 31/07.11.2001, Decision No. 3 under Protocol No. 50/24.03.2003, Decision No. 53 under Protocol No. 53/26.05.2003, Decision No. 23 under Protocol No. 11/11.03.2004, Decision No. 24 under Protocol No. 15/22.04.2004, Decision No. 411/28.10.2004, Decision No. 413/08.06.2006, Decision No. 835/09.11.2006).

The actual reason for it was the complaint by H.B.G. on the ground of disability against the Metropolitan company for urban transport-Sofia EOOD, that persons with disabilities have no possibility to use the specified places for handicapped persons in the transportation vehicles of the metropolitan urban transport /tramway, trolleybus, bus and another transport /.

The motifs for this Recommendation have been:

The Commission for Protection from Discrimination, being a specialized public authority for prevention and protection from discrimination, as well as for provision of equal possibilities pursuant to Article 40, paragraph 1 PfDA., in conjunction with Article 1 of the Protection from Discrimination Act, exercising its power pursuant to Article 47, point 6 PfDA, recommends to the Metropolitan municipality and to the Metropolitan company for urban transport, SKGT Sofia EOOD, to discontinue the discriminatory practice against people with disabilities during their transportation by urban transportation and to be create adapted conditions for their traveling by such transport; recommends to the Metropolitan Municipal Council to amend and supplement the Regulation for transportation of passengers and conditions for traveling in the urban mass Transportation vehicles in the territory of the Metropolitan municipality.

The people with disabilities make one of the most risky groups and that is why the Bulgarian legislator has also created a legal framework for the protection of their rights and for the establishment of conditions for their integration and equalization of the possibilities, by adopting the Integration of People with Disabilities Act (in force since 01.01.2005, promulgated in the State Gazette No. 81 of 17 September 2004, last amend., State Gazette No. 108/29 December 2006).

This law regulates the establishment of conditions and guarantees for: equality of people with disabilities, their social integration and the exercise of their rights, their integration in the working environment, support to them and to their families.

The integration of people with disabilities is also realized by means of accessible life and architectural environment, including by accessible mass transport. Under section IV of this law, the establishment of conditions for accessible life and architectural environment for people with disabilities has been regulated, in the same way, as it is accessible to all other people with no disabilities. Article 34 (amend., State Gazette, No. 88/2005) of the Integration of People with Disabilities Act imposes the obligation to the Ministry of Transport to establish conditions for access of people with disabilities to transport services, by developing normative acts and standards for accessible transport for public use, implementing technical

facilities in public transport in view to facilitate the movement of people with disabilities, including to provide for special conditions for the traffic of road vehicles transporting people with disabilities.

At the same time Article 38, point 2 of the Integration of People with Disabilities Act imposes the competence, respectively the obligation to the municipalities to ensure accessible public transportation for the passengers, by adapting the existing mass transportation vehicles and putting into exploitation transportation vehicles, technically adapted to be used by persons with disabilities. An argument in favour of this Recommendation is also the adoption of § 6 of the Transitional and Final Provisions to the Integration of People with Disabilities Act, according to which the supreme legislative authority in the Republic of Bulgaria, the National Assembly, has fixed a deadline - 31 December 2006 - to provide free access for people with disabilities, to public buildings and constructions – governmental and municipal property. Such access should have been provided by overcoming the relevant architectural, including transport and communication barriers, by all governmental and local authorities running such properties.

According to Article 4 of the Regulation for transportation of passengers and conditions for traveling in the urban mass Transportation vehicles in the territory of the Metropolitan municipality, SKGT Sofia EOOD is realizing the income, organization, management, control, accounting and qualification of passengers' transportations in urban mass transportation, at which the reason for the performance of such activities is the contractual legal relation between the company and the Metropolitan municipality.

By a contract, the Metropolitan municipality has delegated the rights for performing such activities; consequently, the control over their implementation should be performed by the municipality itself. At the same time, there is no place in the above Regulation, where the activity regarding control over observation of the order concerning transportation of people with disabilities has been mentioned, and also that they should have the opportunity to use specific place, designed and specially marked for them, except the control and sanctions for irregular passengers having no transportation document.

Even the use of urban mass transportation by people with disabilities holding cards for preferential trips, as mentioned under Article 28 of the Regulation, does not provide to them the opportunity and the access to places designed for them; besides, no control, sanctions and liable subjects for their realization have been provided. Such vacuum in the Regulation for transportation of passengers and conditions for traveling in the urban mass Transportation vehicles in the territory of the Metropolitan municipality creates conditions for unequal treatment of the most vulnerable people in our society, the people with disabilities.

Regarding persons with disabilities, the principle of equal treatment in using urban mass transportation has been violated also due to the non-acceptance of specific measures, which should meet their needs, by the Metropolitan municipality and SKGT-Sofia EOOD, as well as in partnership between all interested parties, especially on local level, in order to compensate for the unequal status of this group of people.

A full panel of the Commission for Protection from Discrimination, taking into consideration Directive (95/16/EC), requiring the provision of access for people with disabilities, as well as the Directive concerning People with Disabilities and the fact that their introduction may be realized not only under a legislative, but also under any other administrative procedure, so that no discrimination is admitted on the grounds of „disability", having its Community legal reason under Article 13 of the Treaty establishing the European Community.

On the grounds of its powers provided Article 47, point 6 and point 7 in conjunction with Article 40, paragraph 1 of the Protection from Discrimination Act and Article 38, paragraph 1, points b, c of the Rules of Proceedings before the Commission for Protection

from Discrimination, and pursuant to Article 25 of the Rules of Organization and Operation of the Commission for Protection from Discrimination (promulgated in the State Gazette No.57 of 12 July 2005, amend. State Gazette No. 54 of 4 July 2006), the Commission

RECOMMENDS to the METROPOLITAN MUNICIPAL COUNCIL to adopt by Decision, a supplement to Regulation concerning the Transportation of Passengers and Conditions for Traveling in the Urban Mass Transportation on the Territory of the Metropolitan Municipality (adopted by Decision No. 36 under Protocol No. 8/14.03.2000, last amended by Decision No. 835/09.11.2006) in order to provide equality for the people with disabilities using urban mass transportation, in a way that transport services are accessible to them, using a specific mechanism for the provision of access to places designed for them in the transportation vehicles of public transport, by providing control over their access to such places, by assigning this task to specifically liable subjects and stipulation of sanctions for non-observing such requirement, as a guarantee for the effective realization of access.

By virtue of Article 47, point 8 of the Protection from Discrimination Act, the Metropolitan Municipal Council shall send to the Commission for Protection from Discrimination their draft for amendment and supplement to the above Regulation for getting opinion concerning its compliance with the legislation for prevention of discrimination.

Recommends to the METROPOLITAN MUNICIPALITY, represented by Mr. B.B., MAYOR of the municipality, to annex the contract concluded pursuant to Article 4 of the Regulation concerning the Transportation of Passengers and Conditions for Traveling in the Urban Mass Transportation on the Territory of the Metropolitan Municipality, so that to the Metropolitan company for urban transport - Sofia EOOD the contractual obligation is imposed, to realize control concerning the access of people with disabilities to places designed for them in the transportation vehicles of public transport; as well as to provide for other positive measures, so that the principle of equal treatment of people with disabilities is not violated, when using urban transport.

This Recommendation shall be addressed to the Metropolitan municipality, the Metropolitan Municipal Council, the Ministry of Transport, in its capacity of interested party and to H.B.G., who referred to the Commission for Protection from Discrimination with his complaint No. 44-00-5024/2007

28. Decision No. 17 of 13.03.2007 on case file No. 76/2006 of CPD Fifth Specialized Permanent Sitting Panel [41]

Discrimination on the ground of disability
Art. 41 Constitution of the Republic of Bulgaria
Art. 6, Paragraph 2 and Article 15, Paragraph 2 of the Law on Normative Acts
Art. 2, Paragraph 1, Article 3 in conjunction to Article 31, point 6 and point 8 and Article 38 of the Law for Non-profit Legal Entities
Art. 4, Article 40, Paragraph 1 and Article 65 of PfDA
Art. 9, Paragraph 2 of the Law on Protection and Development of Culture

[41] Decision has entered into force – see Decision No. 7948 of 25.07.2007 under administrative file No. 3240/2007 and Decision No. 451 of 14.01.2008 under administrative file No. 10322/2007, both of the Surpreme Administrative Court .

CoM Decree No. 153/28.07.2000 for adjustment of culture institutes to Regional libraries
Art. 5, Article 6 and Article 10 of the Regulation on organization and activities of audio libraries

Alleged violation: by virtue of Article 10 of the Regulation on Organization and Activities of Audio Libraries, only the members of S. can use library services for visually impaired people, which breaches the equal treatment principle and Article 41 of the Constitution of the Republic of Bulgaria, limiting their access to information.

The defendant removed the discriminatory texts in Article 6 and Article 10 of the Regulation on organization and activities of audio libraries, banning visually impaired individuals who weren't members of the association, complainants including , from using the "talking books" in the audio libraries. Thus, the precondition for inequal treatment on the ground of membership has been eliminated and all visually impaired people got equal access to audio-books in the audio libraries of the association. Since correction measures have been taken, complainants' claim shall be considered unjustified.

The unchanged text of Article 5 of the Regulation on the order and activities of audio libraries, issued by the S. Board, creates preconditions for direct discrimination against those who were not its members. The defendant S., being a non-profit organisation protecting interests of visually-impaired in Bulgaria, shall take into account the will of the State, i.e. the Constitutional duty to care for socially disadvantaged and persons with disabilities. The State allocates annually significant funding for leveling of their opportunities, regardless if they are members or not of certain non-profit association, in this case of S.

The case file is initiated on complaint registered under No. 621/22.05.2006, lodged by virtue of Article 50, point 1 of PfDA of A.K.M.. and M.B.K. from the city of V. against S. and adopted by the Managing Board of Regulation on order and activities of audio libraries. By Order of CPD Chairman No. 197/25.05.2006, proceeding on the ground of disability was initiated.

In their complaint, Mr. M. and Mr. K. state that they are visually impaired individuals with permanently decreased employability 90% for the first complainant and 96% for the latter. Due to the essence and degree of their disability, they can access information solely by means of so-called "talking books" in the audio libraries of S. Complainants grieve that under Article 10 of the Regulation on organization and activities of audio libraries, endorsed by S. Managing Board on 6 October 2003, only Association's members can use the library services. In their opinion, that provision breaches the equal treatment principle and contradict to the Constitution, since it limits their access to information by virtue of Article 41 the Constitution. Applicants allege that the S. Union implements discriminatory policy against visually impaired persons who are not Union members and against themselves, in particular. They approach the Commission for Protection against Discrimination to impose compulsory administrative measures for termination of the discriminatory practice against them and all visually impaired individuals, who are not members of S.; and to prescribe amendment of the Regulation, adopted by S. Board on October 6, 2003, providing equal access for all visually impaired persons to the talking books. In support to their allegations, by virtue of Article 9 of PfDA, the complaint M. and K. produced: Decision of the Managing Board of the Union of the Blind in the city of V. dated 17.02.2006, for complainants' dismissal from the union; expert decision of the Labour-Expert Medical Commission ("LEMC") in V. No.

0000/10.12.2002 (copy), issued to M.B.K. certifying his 96.57% loss of employability, placing him in first category of disability for life; expert decision of Labour-Expert Medical Commission No. 0000/06.02.2002 (copy), issued to A.K.M. certifying his visual impair with 90% loss of employability, placing him in second category of disability for life; Regulation on organization and activities of audio libraries, endorsed of S. Board on 6 October 2003

At the reconciliation hearing on 21 December 2006, Parties expressed will to reach mutual agreement; the Sitting Panel fixed a term by 21.01.2007. Within that perion, agreement has not been reached and the proceedings continued in essence. At the open hearing on 28 February 2007, the defendant produced copies of the S. Board decisions, as follows: of 24 and of 25 February 2004; of 25 and 26 April 2006 and of 27 October 2006. As evident, the annual membership fee for access to the audio libraries of S. has remained unchanged since 2004 to present. The amount of membership fee for audio libraries' users, as set in those decisions, is: for Union members – BGN 2.00 per year, for non-members – BGN 20 per year. Those decisions are based on Article 6 of the Regulation, adopted by the Board on 16 October 2003, amended on 27 October 2006. It is litigated that complainants were aware of those decisions and they have not been deprived from the right to use audio libraries services to S. The defendant vindicates that the complaint is unjustified and requests the Commission to leave it without consideration.

Complainants object that the defendant has not informed them for decision on membership fee for use of audio-library services to S. They objects against the difference between the membership fee for visually impaired members and non-members of S. They allege that the fee for visually impaired non-members is discriminatory and strenuous for them. Complainants maintain their request to the Commission for Protection against Discrimination to impose compulsory administrative measures for the Regulation and termination of the discriminatory practice against visually impaired individuals, who are not members in S.

From the produced evidences, the Commission's Fifth Specialized Permanent Sitting Panel has established the following:

Complainants M. and K. are persons with permanently decreased employablity, as confirmed in decisions of Labour-Expert Medical Commission No. 0000/06.02.2002 and No. 0000/10.12.2002, respectively by 90% and 96.57% loss of sight. The type of their disability impedes them to perceive information visually; the only way to perceive information is auditory. In that sense, the so-called "talking books" are major tool for them to obtain information, learn and enrich their culture.

Complainants M. and K. have terminated their membership as of 17.02.2006 by virtue of decision made by the Union's regional branch in the city of V. Legal consequence of that decision is their dismissal of the users' circle of audio libraries who pay membership fee of BGN 2.00 per year for use of "audiobooks" and join the other group of users who are not members and pay fee of BGN 20 per year for the same service

Complainants also allege that since they were Union members in the period when fees were estimated, i.e. on 24 - 25 February 2004, they had to be made aware of it. Besides, as stating in their opinion, filed at the CPD register under No.137/18.01.2007, they object against the amount of membership fee of BGN 20 per year, for using the audio libraries to S.

Undisputedly, complainant M. and his family had personal subscription to audio-library in the city of V., after their dismissal however they did not seek it.

Following the complaint lodging and proceeding's initiation, the defendant took measures for elimination of the discriminatory texts in Article 6 and Article 10 of the Regulation on organization and activities of audio libraries, pursuant to decision of S. Board of 27.10.2006, the disputed provisions have been amended to provide equal access to the audio libraries for all. The text of Article 5, however, remained unchanged.

Undisputedly, the defendant was willing to reconcile, as evidenced from her attempts to adjust certain texts of the Regulation in compliance to the imperative norms of the Protection from Discrimination Act (PfDA). Mutually agreeable conciliation was not reached due to the condition set by the Defendant, to keep the membership fee as estimated by S. Board.

Considering those circumstances, Fifth Specialized Permanent Sitting Panel of the Commission for Protection against Discrimination drew several conclusions:

On one hand, it is evident that since 2004 the complainants were aware of the membership fee for visually impaired members and non-members of S. for access to audio libraries' services; they did not object then, however, since the amount of BGN 2.00 per year satisfied them. In the past, when they were still members of S., they did not object to the inequal treatment of those visually impaired individuals who were not members of S. and paid BGN 20.00 per year for access to the audio libraries. Besides, as a non-profit legal entity, the Union determines the fees, objectives and means to accomplish those objectives, under the provisions of Article 2, Paragraph 1 and Article 3 in conjunction to Article 31, point 6 and 8 of the Law on Legal Entities on Non-profit Making Basis. *Therefore S. Board undertook legitimate actions, determining the amount of membership fee for access to audio libraries*. After the elimination of discriminatory texts in Article 6 and Article 10 of the Regulation on organization and activities of audio libraries for non-members of S., respectively for the complainants, the precondition for inequal treatment on the basis of S. membership have been removed. *Therefore, that part of the claim of M. and K. is unjustified and shall not be considered*.

On the other hand, the unchanged text of Article 5 of the Regulation of S. Board creates *preconditions for direct discrimination* against the non-members of the Union because: first, intervention in public bodies' organization and activities, such as public libraries, whose status is stipulated in the Council of Ministers Decree No.153/28.07.2000, transforming culture institutes in Regional libraries, Prom. SG, issue 77 of 19.09.2006, enacted by virtue of Article 9, Paragraph 2 of the Law for Protection and Development of Culture, amended, SG, issue 106 of 27.12.2006 and Article 6, point 2 of the Law on Normative Acts, promulgated in SG, issue 55 of 17.06.2003, and certain provisions of the Legal Entities on Non-profit Making Basis, that contradict directly of Article 15, Paragraph 2 of the Law on Normative Acts. *Therefore, the text of Article 5 reading "which are used only by UBB members" is legitimate when imposes duty for the organization of public libraries' activities*. Secondly, the same text contradicts to the provisions of Article 4 of PfDA, constituting discrimination on the ground of *personal and social status*. Thirdly, S. is a national-level organization under the criteria set in Council of Ministers' Decree 346 of 17.12.2004, in force since 01.01.2005. As a national representative association and a non-profit legal entity, registered with main subject of activity in public benefit, S. receives considerable annual state action grant, allotted under the State Budget Act. That subsidy is allotted by State to NGOs under a very specific set of criteria, to assist their activities in community benefit and for protection of public interests. In this case, S. is nongovernmental organization dedicated to protect the rights and interests of persons with visual disabilities in Bulgaria. Therefore, considering the provisions of Article 38 of the Law on Legal Entities on Non-profit Making Basis, and the fact that "audio-books" are produced, maintained and managed solely by S., to provide services to visually impaired Bulgarian citizens, members or non-members of S., the Managing Board *shall take into account the will of State, which in compliance to the Constitutional duty to take care of socially disadvantaged and persons with disabilities, allocates annually significant funding for provision of equal opportunities of those groups individuals, regardless if they are members of certain NGO, in this case of S.*

Considering above stated and by virtue of Art.65 in conjunction to Article 40, Paragraph 1 of PfDA, Fifth Specialized Permanent Sitting Panel of the Commission for Protection against Discrimination

DECIDED

LEAVES complaint No. 621/22.05.2006 lodged by M.B.K. and A.K.M., regarding their claim for the amount of membership fee for access to audio libraries at S., without consideration.

GIVES MANDATORY INSTRUCTION to S. Board, within one month of this decision delivery to bring the text of Article 5 of the Regulation on organization and activities of audio libraries in compliance to the Protection from Discrimination Act and general domestic legislation.

The Commission shall be informed by S. for the steps taken by the aforementioned Legal Entity in implementation of this mandatory instruction.

This decision shall be delivered to interested parties for advice and implementation.

Decision can be appealed within 14 days before the Supreme Administrative Court by virtue of the Administrative Procedure Code.

29. Decision No. 28 of 24.04.2007 of CPD Nine-member Full Panel [42]

Discrimination on the grounds of disability

Art. 1, Article 40, Paragraph 1 and Article 47, Para 8 in conjunction to Article 50, point 2 of PfDA
Convention on the Rights of Persons with Disabilities and the Facultative Protocol to it, yet unsigned and unratified

The Convention on the Rights of Persons with Disabilities is a complete document, whose norms directly regulate the international legal relations in the field of protection of the rights of people with disabilities and their fundamental freedoms. on 30 March 2007 in New York a procedure required for ratification of the Convention on the Rights of Persons with Disabilities, which has been opened for signature by the UNO.

On 13 February 2007 in Brussels, the European Commission appealed the EU Member States on 13 February 2007 in Brussels, to accede the Convention and its integrated Facultative Protocol.

CPD recommends to the Council of Ministers of the Republic of Bulgaria to begin with the preparation of and to timely perform the procedure required for ratification of the Convention on the Rights of Persons with Disabilities and its Facultative Protocol, as well as their introducing for ratification by the National Assembly of the Republic of Bulgaria.

Following a report delivered by Aneli Chobanova and Ass. Prof. Irina Muleshkova, members of the Commission, having its legal reasoning under Article 50, point 2 of the Protection from

[42] The Decision is a Recommendation, thus cannot be appealed against.

Discrimination Act, comprising a suggestion to the Commission to exercise its power pursuant to Article 47, point 8 PfDA, about the addressing of a recommendation to the Council of Ministers of the Republic of Bulgaria to begin with the preparation of and to timely perform the procedure required for ratification of the Convention on the Rights of Persons with Disabilities, which has been opened for signature by the UNO on 30 March 2007 in New York, as well as of the Facultative Protocol to that Convention, as well as their introducing for ratification by the National Assembly of the Republic of Bulgaria.

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The motifs for this decision are that the Convention on the Rights of Persons with Disabilities is a complete document, whose norms directly regulate the international legal relations in the field of protection of the rights of people with disabilities and their fundamental freedoms. They maintain that the adoption of this document by the relevant State will be an additional opportunity of its citizens to seek protection of their breached rights or to find direct solution of disputable issues. In addition, each accessing State will enjoy the opportunity to participate in the official bodies provided under this Convention, by individual or representative participation, as well as by opinions, suggestions and standpoints, which is a legal way to influence the improvement of international jurisdiction and creation of regulatory acts in the sphere of persons with disabilities.

Being a specialized public authority for prevention and protection from discrimination, as well as for provision of equality in the opportunities, it is in the competences of the Commission for Protection from Discrimination pursuant to Article 40, paragraph 1 in conjunction with Article 1 PfDA to exercise its power pursuant to Article 47, point 8 PfDA and to address a recommendation to the Council of Ministers of the Republic of Bulgaria to begin with the preparation of and to timely perform the procedure required for ratification of the Convention on the Rights of Persons with Disabilities, which has been opened for signature by the UNO on 30 March 2007 in New York, as well as of the Facultative Protocol to that Convention, as well as their introducing for ratification by the National Assembly of the Republic of Bulgaria.

The importance given by theUN to the process of signing and ratifying of the Convention on the Rights of Persons with Disabilities and And its Facultative Protocol, is underlined also by the rapid procedure of their entry into force. That rapid procedure follows the condition that the Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession to the UN Secretary-General.

Last, but not least, the appeal of the European Commission addressed to the EU Member States on 13 February 2007 in Brussels, to accede the Convention and its integrated Facultative Protocol, the Commission for Protection against Discrimination shall be taken into consideration.

In view of the above statement, as well as in view of the competence pursuant to Article 40, paragraph 1 in conjunction with Article 1 of the Protection from Discrimination Act (PfDA), by virtue of Article 47, point 8 PfDA, Commission for Protection against Discrimination

RECOMMENDS

To the Council of Ministers of the Republic of Bulgaria to begin preparation and to timely conduct the procedure for ratification of the Convention on the Rights of Persons with Disabilities, which has been opened for signature by the UNO on 30 March 2007 in New York, as well as of the Facultative Protocol to that Convention. Following the completion of such procedure, the two documents shall be introduced for ratification by the National Assembly of the Republic of Bulgaria.

30. Decision 39 of 25.02.2008 on case file 88/2007 of CPD Fifth Specialized Permanent Sitting Panel[43]

Discrimination on the ground of disability

Art. 18, Paragraph 6 and Article 130a of the Constitution of the Republic of Bulgaria
Art. 2, Paragraph 2, point 4 of the State Property Act
Art. 4, Article 5, Article 47, point 1 in conjunction to Article 76, Para 1, point 1 and Article 62, Para 2 of Protection from Discrimination Act
The Integration of People with Disabilities Act
Decision of Constitutional Court No. 8/12.07.2007 on file D. 5/2007

Between X Association, Y Association and Z Foundation, on one hand, and the Minister of Justice and Sofia Regional Court, on the other, agreement for reconstruction of the three buildings, where Sofia Regional Court is located, has been reached. The Agreement refers only for that part of the dispute establishing committed discrimination through maintenance of inaccessible architecture environment in the building of Sofia Regional Court on 6 "Dragan Tzankov" Blvd. and the building of Sofia Regional Court on 54 "Tzar Boris the Third" Blvd. The presented agreement is found on equal treatment principle, consistent with law and morale and the Specialized Permanent Sitting Panel has not established obstacles for its approval. Reaching of agreement between the parties and its approval by the Specialized Permanent Sitting Panel stops the consideration of the signal in essence and therefore and by virtue of Article 62, Para 2 of PfDA the proceedings is terminated in that part.

According to the Integration of People with Disabilities Act, its purpose shall be to provide conditions and guaranties for equality for the people with disabilities; social integration and exercising the rights of the people with disabilities; support to the people with disabilities and their families; and integration of the people with disabilities in the working environment. The regulations of Integration of Persons with Disabilities Act aim to ensure public environment that shall guarantee equal participation of persons with disabilities in social and culture life and adjustment of their opportunities with those of persons without disabilities. Integration of Persons with Disabilities Act envisions special duties and obligations for public and municipal bodies. By virtue of § 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act, Free access of people with disabilities to public buildings and facilities, which are state and municipal property, should be provided and the respective architectural, transport and communication barriers should be eliminated until 31 December 2006. The defendants – Minister of Justice and Sofia Regional Court are not undertook stipulated in § 6 effective measures for reconstruction of the building of Sofia Regional Court, located on 2 "Patriarch Evtimii" Blvd., where the Public Enforcement Agent and Register Office to Sofia Regional Court are situated.

The proceedings is initiated by virtue of Article 50, point 3 in conjunction to Article 4 and 5 of the Protection from Discrimination Act (PfDA) by Order No. 000/00.00.0000 of CPD Chairman and is assigned to Fifth Permanent Panel, specialized on the ground of disability.

[43] The Decision is appealed before the Supreme Administrative Court by the Minister of Culture, on the complaint administrative file No. 5977 of the records for 2008 has been created, pending at the moment of publication.

The proceedings is initiated on a signal registered under No. 00-00-000 of 00.00.0000 from X Association, filed in the non-profit legal entities register at Sofia City Court 0000/0000 with address city of S., Str. X 00, represented by K.P.; Y Association, filed in the non-profit legal entities register with the Sofia City Court 0000/0000, address city of S., Str. 0000, represented together of M.D., D.M. and S.N. and Z Foundation, filed in the non-profit legal entities register 0000/0000, address city of S., 00000000, against Sofia Regional Court, represented by its Chairman and the Minister of Justice.

X Association and Y Association took part in the proceedings before the Commission through their authorized representative D.M., Z Foundation took part in the proceedings before CPD through its duely authorized representative lawyer S.R.

Sofia Regional Court took part in the proceedings through its Deputy Chairman S.K. The Minister of Justice took part at the proceedings before the Commission through junior legal adviser L.D.

The signal alleged that Sofia Regional Court has breached the rights of persons with disabilities. Sofia Regional Court is situated in three buildings: 1. Building on 6 "Dragan Tzankov" Blvd.; 2. Building on 54 "Tzar Boris the Third" Blvd.; 3. Building on 2 "Patriarch Evtimii" Blvd. Complaint alleges that the buildings do not meet the requirements for accessibility of persons with disabilities. Allegedly, in any of the buildings there isn't a ramp, making impossible the access of disabled persons in wheelchairs. Interior architecture of buildings impeded the access of persons with disabilities, there are no devices facilitating the physical access for persons with mobility disabilities, different neurological disabilities or visually impaired people Allegedly, conditions for overcoming of architecture barriers to Court buildings and legal activities have not been provided for the persons with listed disabilities and for persons with hearing-impairments. In the building on 6 "Dragan Tzankov" Blvd. There is appropriately sized elevator to be used by people with and without physical disabilities. The access to Register offices on the fourth floor and to the court rooms is impossible, however. The building situated on 54 "Tzar Boris the Third" Blvd. has not been brought in compliance with requirements – the court rooms are on the second floor, there is no elevator or slope. The applicants indicate that the building on 2 "Patriarch Evtimii" Blvd. was in the same situation.

Complainants allege that the Sofia Regional Court has not undertaken anything to exercise its duties and obligations under PfDA, it has not constructed nor maintained accessible architecture environment, thus maintaining architecture and communication barriers impeding the access of persons with disabilities to respective buildings and impeding their participation in legal proceedings. In that manner, the access of those people to justice is impeded. In applicants' view, that was humiliating treatment.

Applicant refers the Commission to establish discrimination by virtue of Article 5 of PfDA and to oblige the Sofia Regional Court to terminate the discriminatory treatment in future by reconstructing and improving the accessibility of buildings and to eliminate described impediments.

The defendant, Sofia Regional Court, through its Chairman, recognized that buildings are unfit for free access of persons with disabilities; he litigated, however, that sufficient level of accessibility could not be ensured. The reason for that is that the buildings on 6 "Dragan Tzankov" Blvd. and 2 "Patriarch Evtimii" Blvd. are culture monuments and every interior reconstruction requires obtaining of permission from the Ministry of Culture. The defendant litigated that in 2006, the Sofia Regional Court management took measures to remove some of the architectural barriers, namely:

- in the building of 6 “Dragan Tzankov” Blvd.: the two staircases from the main entrance to the elevator have been fitted with steel railing for wheelchairs. On the step in front of the elevator, a massive concrete slope was constructed. The only elevator in the building was replaced with a modern one. The Ministry of Justice, as owner, took the responsibility to allocate the necessary funding. At the parking lot in front of the main entrance, there was a parking spot for persons with disabilities. Access to the basement floor where the toilets are situated has not been provided, since the staircase was too steep.

- the building on 2 “Patriarch Evtimii” Blvd. – the building is absolutely unfit to function as a court building. Staircases are too steep and installing of railing is pointless.
- the building of 54 “Tzar Boris the Third” Blvd. – the entrance is supplied with steel wheelchair rails. Staircase to the second floor is too steep to allow wheelchair approach.

Allegedly, there are a plan of a new accessible building where Court shall be moved, disposing all necessary provisions for free access of persons with disabilities to the court premises.

The second defendant – the Minister of Justice – has produced explanations stating that the Ministry of Justice has made every possible effort under the capital expenses budget to meet the adaptation needs. He stated that in the building of 6 “Dragan Tzankov” Blvd. and 54 “Tzar Boris the Third” Blvd., rails have been installed; in the building of 6 “Dragan Tzankov” Blvd. massive slope in front of the elevator has been constructed; in front of the buildinga parking spot for persons’ with disabilities cars has been provided. He confirmed the statements of the Sofia Regional Court Chairman, namely that in the building of 2 “Patriarch Evtimii” Blvd. the installing of rails or platform was not expedient. At the Sofia Regional Court, a request for replacement of the elevator in the building of 6 “Dragan Tzankov” Blvd. due to wear and tear of the old one has been lodged and the Ministry of Justice took steps in compliance with the Public Procurement Act. It was litigated that the Ministry of Justice took actions to commission the construction of a new, modern court building on 54 “Tzar Boris the Third” Blvd. meeting all EU accessibility requirements. At present, plan has been drafted and as soon as it was endorsed by the Chief Architect of Sofia, the procedures under the Public Procurement Act shall be put in place.

The Fifth Permanent Panel of the Commission for Protection against Discrimination, after considering separately and in totality all prodiced evidences and opinions of the parties, established the following:

I. In that case, the dispute refers to three buildings where Sofia Regional Court is located - the building of 6 “Dragan Tzankov” Blvd., where Sofia Regional Court is situated, the building on 2 “Patriarch Evtimii” Blvd., where the Public Enforcement Agent and the Public Register Office are situated and the building of 54 “Tzar Boris the Third” Blvd., where the Marriage Unit at the Sofia Regional Court is situated.
By virtue of Article 2, Paragraph 2, point 4 of the State Property Act, public State property shall include any other real properties designated to serve permanent public needs of national importance by public use. According to Article 130a of the Constitution of the Republic of Bulgaria, the Minister of Justice shall manage the property of the Judiciary. By virtue of Article 387 of the Judiciary System Act, the Minister of Justice shall organize the management of the Judiciary property – immovable property and movable objects. By virtue of Article 390 of Judiciary Act, the Minister of Justice assign the management and maintenance of movable property of Judiciary to administrative managers.

By virtue of Constitutional Court Decision No. 8/12.07.2007 on case 5/2007, assigning the Minister of Justice as a Council of Ministers member authorized to manage the property of the Judiciary, that management shall comply Article 18, Paragraph 6 of the Constitution and shall be in interest of citizens and society. In that sense, the management of Sofia Regional Court premises shall be in interest for persons with disabilities, providing them free access to court buildings and opportunity to participate in court proceedings.

II. For the building of 6 "Dragan Tzankov" Blvd. and the building of 54 "Tzar Boris the Third" Blvd.

On 03.12.2007, a letter has been lodged with the CPD registered under No. 44-00-6542/03.12.2007, together with joint agreement for partial termination of the case file. The agreement indicates that parties have reached agreement concerning architecture barriers for persons with disabilities in the buildings of Sofia Regional Court, namely – on 35 "Dragan Tzankov" Blvd., 54 "Tzar Boris the Third" Blvd. and "Patriarch Evtimii" Blvd., constituting prohibited form of discrimination by virtue of Article 5 of PfDA. Point 2 of the agreement reads that Sofia Regional Court shall construct and the Ministry of Justice shall finance by 31 March 2008 in the building of Sofia Regional Court on 6 "Dragan Tzankov" Blvd. the following:

- external slope for wheelchairs' approach to the building service entrance (concrete, renovating the aisle in front of the service entrance) and internal slope – from service entrance to back entrance in front of courtrooms 7 and 7A (metal construction, covered with aluminium riffle tin), supplied with info table in front of the central entrance pointing the entrance for persons with disabilities;
- opening of a new door 1.40 m wide and 2.20 m height of corridor to service entrance to corridor before the Register Office, which presently provides free access to the whole first floor, and to the elevator in the building;
- installing of an elevator accessible for wheelchairs.

The Agreement contains clause referring to the building on 54 "Tzar Boris the Third" Blvd., namely – Order of the Sofia Regional Court Chairman that court hearing where persons with disabilities are involved shall be implemented in the court room on the first floor, accessible for persons with disabilities. Such Order by the Chairman has been lodged with the Commission and registered under No. 10-01-1/18.01.2008.

The Specialized Permanent Sitting Panel, considering the agreement, has established that it refers only to that part of dispute requesting establishing of committed discrimination through maintenance of inaccessible architecture environment in the building of Sofia Regional Court on 6 "Dragan Tzankov" Blvd. and the building of Sofia Regional Court on 54 "Tzar Boris the Third" Blvd. Thus presented agreement is found on equal treatment principle, consistent with law and morale and The Specialized Permanent Sitting Panel has not established obstacles for its approval. Reaching of agreement between the parties and its approval impedes the consideration of signal in essence and therefore, by virtue of Article 62, Para 2 of PfDA, the proceedings shall be terminated in that part.

III. For the building on 2 "Patriarch Evtimii" Blvd.

It is not disputed that the building on 2 "Patriarch Evtimii" Blvd. is unfit for the needs of persons with disabilities. As stated in point I, the Minister of Justice is in charge with the Court building management, who shall assign their management to the administrative managers of the Judiciary bodies. In that sense, no difference shall be made between status of buildings on 6 "Dragan Tzankov" Blvd., on 54 "Tzar Boris the Third" Blvd., on one hand, and those on 2 "Patriarch Evtimii" Blvd. Persons responsible to undertake steps for

reconstruction of the building on 2 “Patriarch Evtimii” Blvd. Are the Sofia Regional Court, represented by its Chairman and the Minister of Justice.

According to the Integration of People with Disabilities Act, its main objective is to create circumstances and guarantees for equality of persons with disabilities, social integration and rights. Main objective of the Integration of Persons with Disabilities Act is to create public environment guaranteeing equal participation of persons with disabilities in the social and culture life and adjustment of their opportunities with those of persons without disabilities. In that sense, the Integration of Persons with Disabilities Act envisions special duties and obligations for public and municipal authorities. Those special duties and obligations for public and municipal authorities shall gear undertaking of effective practical measures to adjust environment inhabited by persons with disabilities. The lack of such measures results in incomplete participation of persons with disabilities in community life and discrimination against them. By virtue of Paragraph 6 of the Transitional and Final Provisions of the Integration of Persons with Disabilities Act, by 31.12.2006, free access for persons with disabilities shall be provided through equipment – state and municipal property, - overcoming the respective architecture, transport and communication barriers. Obviously, that has not been dine in the respective building.

Therefore The Specialized Permanent Sitting Panel considers that liable persons, namely – Sofia Regional Court, represented by its Chairman and the Minister of Justice – have breached the provisions of Article 5 of PfDA, stipulating that the construction and maintenance of architecture environment impeding the access of persons with disabilities to court buildings constitutes discrimination. In fact, the Minister of Justice is the competent state authority that should undertake measures for adjustment of the building on 2 “Patriarch Evtimii” Blvd. in accordance with requirements of the Integration of Persons with Disabilities Act and PfDA. The Chairman of Sofia Regional Court, however, should undertake actions to launch such a procedure.

It was established that the building on 2 “Patriarch Evtimii” Blvd. is a monument of culture and its reconstruction requires obtaing of permission from the Minister of Culture.

On 25.01.2008, a letter registered under No. 90-11-2. at the CPD. From the enclosed Memo, it is evident that the Head of “Investments, Procurements, Property Management and Economic Activities” Directorate, Engineer Ivan Tzatzov suggested the Ministry of Justice Secretary-General to take steps for purchasing and installing a hydraillc platform in the building of 2 “Patriarch Evtimii” Blvd. It is not clear, however, if the proposal was approved or steps for reconstruction shall be taken.

Based on above stated and by virtue of Article 64 in conjunction to Article 65 and Article 66 of PfDA Fifth Permanent Panel of the Commission for Protection against Discrimination

DECIDED

APPROVES the agreement reached on case file 88/07 between X Association, Association У, Foundation Z and the Sofia Regional Court and the Minister of Justice for improved accessibility of the buildings at 6 “Dragan Tzankov” Blvd. and 54 “Tzar Boris the Third” Blvd., reading:

1. The parties agree that the presence of architecture barriers for persons with disabilities in the Sofia Regional Court premises on 6 “Dragan Tzankov” Blvd., 54 “Tzar Boris the Third” Blvd. and 2 “Patriarch Evtimii” Blvd. constitute discrimination by virtue of Article 5 of PfDA.

2. Pursuant to PfDA and Integration of Persons with Disabilities Act, Sofia Regional Court shall construct in the building of 6 "Dragan Tzankov" Blvd. and the Ministry of Justice shall provide by the end of March 2008:

A concrete out-door slope for wheelchairs approach at the building service entrance (reconstructing the ramp in front of the service entrance) and in-door slope to the service black entrance in front of courtrooms 7 and 7A (metal construction covered with aluminium tin), with information note in front of the central entrance, indicating the entrance for persons with disabilities;

A new gate 1.40 meters wide and 2.20 high from the corridor to the service entrance to the corridor in front of the register office, giving access to the whole first accessible and to the elevator;

Install elevator accessible for wheelchairs.

As of the building of Sofia Regional Court at 54 "Tzar Boris the Third" Blvd., special Order of the Sofia Regional Court Chairman shall be ordained that hearings, engaging persons with disabilities shall be held in court hall on the first floor, accessible for persons with disabilities.

TERMINATES the proceedings on case file 88/07 in that part.

ESTABLISHES that in the building of 2 "Patriarch Evtimii" Blvd., where the Public Enforcement Office is situated and the Register Office to the Sofia Regional Court have architecture environment impeding the access of persons with disabilities and that the Sofia Regional Court, represented by its Chairman and the Minister of Justice have not undertaken effective measures for reconstruction of the building, which constitutes discrimination by virtue of Article 5 of PfDA.

RECOMMENDS by virtue of Article 47, point 1 in conjunction to Article 76, Para 1, point 1 of PfDA to the Sofia Regional Court, represented by its Chairman, to undertake actions for reconstruction of the building on 2 "Patriarch Evtimii" Blvd.

RECOMMENDS by virtue of Article 47, point 1 in conjunction to Article 76, Para 1, point 1 of PfDA to the Minister of Justice and to the Minister of Culture to take actions within three months for reconstruction of the building on 2 "Patriarch Evtimii" Blvd.

Within one month since decision delivery, in implementation of the Article 67, Paragraph 2 of PfDA, the Sofia Regional Court Chairman and the Minister of Justice are obliged to inform the Commission in writing on the measures taken in implementation of the mandatory instructions.

The decision shall be delivered to the parties on the case file.

The Decision is subject to appeal before the Supreme Administrative Court through Commission for Protection against Discrimination within 14 days of its announcement of the parties by virtue of the provisions of Article 68, Paragraph 1 of the Protection from Discrimination Act.

31. Prescription No. 1 dated 24.07.2007 of CPD Nine-Member Full Panel (Decision No. 73 dated 24.07.2007)[44]

Discrimination on the grounds of disability
Art. 5, Article 7, point 13, Article 10, Article 11, Paragraph 1, Article 47, Para 4 and Article 50, p. 2 of PfDA
Article 2a, paragraph 1 of the Election of President and Vice-President of the Republic Act; Article 7, paragraph 1 of the Deputies Election Act
Article 8, paragraph 1 and Para 2 of the Local Elections Act
§ 6 of the Transitional and Final Provisions to the the Integration of People with Disabilities Act
The Territorial Organization Act (TOA)
Regulation No.6 of 26.10.2003 on Building of Accessible Environment in Urbanized territories, issued by the Ministry of Regional Policy and Public Works (MRPPW), the Ministry of Agriculture and Forests (MAF), the Ministry of Labour and Social Policy (MLSP) and the Ministry of Health (MH)

The Commission for Protection from Discrimination, in its full Nine Member panel considers that liable public and municipal authorities, namely the Council of Ministers and the Minister of State Administration, have committed discrimination on the grounds of disability, age and marital status to the groups at risk: persons with disabilities, elderly citizens and parents of young children, under the age of 3 years or children with disabilities. Such discrimination is expressed in the non-implementation of the measures, provided under Article 10 and Article 11 of the Protection from Discrimination Act, as well as in violation of Article 5 of the same Act.

CPD recommends to the Council of Ministers to terminate the infringement of Article 5 of PfDA investing in equipment for free access to all election offices with guaranteeing voting right of persons with disabilities, senior citizens and parents with small children. the Commission also recommends to the Minister of State Administration and Administrative Reform, the Regional Election Commissions and the mayors of municipalities and mayoralties to take the necessary measures to ensure exercising of election right of persons with scpecific needs for future elections. Recommendations are addressed to the Minister of Regional Development and Public Works and to the Minister of Education and Science.

The proceedings are by virtue of Article 50, p. 2 of the Protection from Discrimination Act (PfDA).
It was initiated upon report by Aneli Chobanova, Commission member, and the first working group, lodged under i/c No. 12-11-1654/18.06.2007 with the Commission for Protection from Discrimination, by which the Commission is approached for the lack of free access for persons with disabilities to a great part of the buildings, where the sectional election commissions are located, as specified by the regional election commissions for exercising the election right by persons with disabilities, and the necessity linked with it, that the Council of Ministers undertakes direct measures and financially provides the building of constructions for free access during holding any subsequent election.
The report reveals the results of the examination made on 17 and 18.05.2007 and in support of its findings, the protocols of statement have been enclosed, as well as photo material

[44] Decision has entered into force.

concerning the inspected facilities. In the report not only the rooms, where the sectional election commissions are located have been inspected, but also the buildings with sectional election commissions designed for exercising the election right by people with disabilities. The Commission should make a compulsory prescription to the Council of Ministers and to the Mayors of municipalities to undertake direct measures and financially provide the activities related to building of free access for persons with disabilities to and within the buildings, where the relevant sectional election commissions are located.

The Commission accepts the submitted evidences concerning facts established in an undisputable way and finds that there are reasons to undertake the actions provided under Chapter Four in conjunction with the subsequent exercise of its power pursuant to Article 47, point 4 PfDA By the time of elaborating the prescription, the Commission finds as established the following:

In the first place, the norms regulating the accessibility and building of appropriate architectural environment in Bulgaria are predominantly covered by the Integration of People with Disabilities Act (IPDA) - § 6 of the Transitional and Final Provisions (TFP) to IPDA, and the Territorial Organization Act (TOA), but they are also reflected in the PfDA – Article 5 and Article 11, paragraph 1 of the later. On the grounds of the above laws, the "Regulation No.6 of 26.10.2003 on Building of Accessible Environment in Urbanized territories" has been created and is effective. It has been collectively issued by the Ministry of Regional Policy and Public Works (MRPPW), the Ministry of Agriculture and Forests (MAF), the Ministry of Labour and Social Policy (MLSP) and the Ministry of Health (MH) and is in force since 17.01.2004. The Regulation specifies the parameters of the constructions serving for the provision of free access for persons with disabilities to and in various facilities.

In the second place, in all election laws, which are operative in Bulgaria, it has been put down that the "organizational-technical preparation of elections shall be realized by the Council of Ministers, the regional and the municipal administrations, in interaction with the election commissions". Such is the text of Article 2a, paragraph 1 of the Election of President and Vice-President of the Republic Act; of Article 7, paragraph 1 of the Deputies Election Act, as well as of Article 8, paragraph 1 of the Local Elections Act.

At the same time, identical texts have been provided, regulating the possibility that "the Council of Ministers may assign the coordination and implementation of the activity under paragraph 1 to an appointed Minister"; such provision is covered by Article 2a, paragraph 4 of the Election of President and Vice-President Act; by Article 7, paragraph 2 of the Deputies Election Act, as well as by Article 8, paragraph 2 of the Local Elections Act. In pursuance of its power, the Council of Ministers, by its Decision No. 589 of 4 August 2006 concerning the preparation and conduction of elections for the Republic's President and Vice-President of, assigns under point 1 to the Minister of State Administration and Administrative Reform the coordination and implementation of the activities pursuant to Article 2a, paragraph 1 of the Election of President and Vice-President Act.

Again in the same provision, but under point 2, the obligation is imposed upon "the Minister of State Administration and Administrative Reform to introduce by 24.08.2006 to the Council of Ministers for approval a draft account schedule about the expenses for the organizational-technical preparation and conduction of elections". It becomes evident from the contents of the calculation schedules enclosed, as from the text of Decree of the Council of Ministers No. 226 of 29 August 2006 (promulgated in the State Gazette, No. 74/08.09.2006, amend. State Gazette, No. 108/29.12.2006), and Decree of the Council of Ministers No. 81 of 12 April 2007 (promulgated in the State Gazette, No. 33/20.04.2007) that they have not provided financial means for building of constructions for free access of persons with disabilities, elderly citizens and mothers with children's carriages. The lack of such item in the calculation schedules predetermines the non-implementation of the provision

of Article 7, point 13 in conjunction with Article 10 and Article 11 PfDA; in practice, in this way the composition of Article 5 PfDA is realized.

In the third place, in reply to the Compulsory Prescription No. 1 of 24.03.2007 sent by the CPD to the Central Election Commission, by its letter, o/g. No. 118/27.04.2007 the latter submits to the CPD its Decision No. 28/28.03.2007, and under its point 1, instructions to the regional election commissions and the Mayors of municipalities and town councils have been included, to undertake the measures, required for building-up of free access to, for persons with disabilities. Such is also the spirit of Decision No. 161/01.10.2006 of the Central Election Commission for the Election of the Republic's President and Vice-President.

In reply to the imposed obligation, the Mayor of the Metropolitan municipality Mr. B.B., by his letter o/c No. 0500-72/24.04.2007 is requested from the Regional Governor of Sofia-City Mr. P. Modev the amount of 736 040 BGN, which according to the applicant will be necessary "for building-up of provisional pavement and staircase platforms with two-sided protective barriers" leading to the sectional election commissions, determined for the exercise of the election right by persons with disabilities in the territory of the Metropolitan municipality. Out of the consequent correspondence it becomes evident that the requested financial means are not available to the regional governor and in fact he does not dispose of financial means, granted targeted to him by the State, as a result of which the request of the Mayor Mr. B. was left disregarded. The latter, in his turn, justifies the lack of free access to the sectional election commissions in the territory of his entrusted municipality exactly by the shortage of financial means for the realization of the activities related to such building. Such transfer of responsibility from one institution to another is not working in the direction of implementation of the obligations imposed under Article 10 and Article 11 of PfDA, neither in the direction of application of the measures pursuant to Article 7, point 13 to equalize the possibilities of people with disabilities and other groups of citizens at risk to trouble-free exercise their constitutionally bound right of election, but exactly the contrary – such transfer of responsibility has shown serious inertness of the authorities bound by the provisions under PfDA.

In the fourth place, the practice up to now has shown that the location of sectional election commissions in the territory of the country does not considerably differ in the conduction of various elections. In addition, sectional election commissions are usually located in school buildings, to which and within which they, being public buildings – state or municipal property, and according to § 6 of the Transitional and Final Provisions (TFP) to the Integration of People with Disabilities Act (IPDA, and the Territorial Organization Act there is an obligation for public and municipal authorities, by 31.12.2006 at the latest, to provide for free access for people with disabilities. In view of the statements so made it becomes evident that the owners of the buildings specified in the report of Mrs. Chobanova, are already in violation of Article 5 of the Protection from Discrimination Act in conjunction with §6 of the TFP to IPDA.

In the fifth place, from the examination made by the CPD working groups it becomes evident that the accessibility for persons with disabilities has been predominantly provided within the election rooms of the sectional commissions, but to less mobile citizens the problem remains open, how to overcome the architectural barriers at the entrances or the intermediate levels of the buildings, where the sectional commissions, designed for their voting, are located. In this way, not being able to enter the building, such persons are in practice deprived of their right to exercise elections.

In view of the facts so stated and the circumstances established during the process of investigation, the Commission for Protection from Discrimination, in its full Nine Member panel considers that by the liable public and municipal authorities, namely the Council of Ministers and the Minister of State Administration, evident discrimination has been

committed, on the grounds: “disability”, “age” and “marital status” to the groups at risk: persons with disabilities, elderly citizens and parents of young children, under the age of 3 years or children with disabilities. Such discrimination is expressed in the non-implementation of the measures, provided under Article 10 and Article 11 of the Protection from Discrimination Act, as well as in violation of Article 5 of the same Act.

Lead by the above statements and by virtue of Article 47, point 4 PfDA (promulgated in the State Gazette, No.86/30.09.2003, last amendment State Gazette, No.68/22.08.2006), the Commission for Protection from Discrimination,

DECIDED:

PRESCRIBES TO THE COUNCIL OF MINISTERS to discontinue the violation pursuant to article 5 PFDA, by undertaking the required measures and providing the building of free access for persons with disabilities, elderly citizens and parents of young children, under the age of 3 years or children with disabilities, to buildings, where the sectional and regional election commissions are located, as well as within the rooms of such committees, designed for persons with specific needs to exercise their election right, in the conduction of any subsequent election.

PRESCRIBES TO THE MINISTER OF STATE ADMINISTRATION AND ADMINISTRATIVE REFORM to discontinue the violation pursuant to article 5 PFDA, at which in the cases of re-license pursuant to article 2a, paragraph 4 of the Election of President and Vice-President Act; Article 7, paragraph 1 of the Deputies Election Act, as well as Article 8, paragraph 1 of the Local Elections Act or other effective norms under the Bulgarian election legislation and in case that the above person appears to be duly charged with such obligation, to provide for the conduction of any subsequent election in the account schedule to be prepared by the latter, targeted financial means, in sufficient amount, in order to provide the activities concerning the building-up of constructions for free access of persons with specific needs to buildings, where the sectional and the regional election commissions are located, as well as within the rooms of such commissions, designed for such persons to exercise their election right.

PRESCRIBES TO REGIONAL ELECTION COMMISSIONS AND MAYOR OF MUNICIPALITIES AND TOWN COUNCILS, in coordination with the Minister of State Administration and Administrative Reform and the regional managers, to undertake the required measures for building-up of constructions for free access of persons with specific needs to buildings, where the sectional and the regional election commissions are located, as well as within the rooms of such commissions, designed for such persons to exercise their election right, pursuant to the effective normative regulation in this field, and in conformity with the methodical instructions given by the Central Election Commission.

FIXES a term of one month as from notification of this prescription, in order for its addressees to notify the CPD of the measures for its implementation, undertaken by them

RECOMMENDS to the MINISTER OF REGIONAL DEVELOPMENT AND PUBLIC WORKS to render assistance in building the required constructions, designed for the provision of free access by persons with specific needs to buildings, where the sectional and regional election commissions are located, as well as within the rooms of such commissions, designed for such persons to exercise their election right.

RECOMMENDS to the MINISTER OF EDUCATION AND SCIENCE to render assistance in building the required constructions, designed for the provision of free access by persons with specific needs to buildings, where the sectional and regional election commissions are located, as well as within the rooms of such commissions, designed for such persons to exercise their election right.

RECOMMENDS to THE REGIONAL MANAGERS to bring this prescription to the knowledge of Mayors of municipalities and town councils.

These recommendations shall be delivered to their addressee for advice and implementation.

Section VII

Multiple discrimination

32. Decision No. 37 dated 20.02.2008 on case file No. 116/2007 of the CPD Five Member Panel on multiple discrimination[45]

Discrimination on more than one ground, multiple discrimination, exercising the right of labour and personal situation

Art. 5, Paragraph 4 and Article 48 of the Constitution of the Republic of Bulgaria;
Art. 4, Paragraph 2; Article 14, Paragraph 1; Article 47, point 6; Article 67, point 4; Article 76, Paragraph 1, point 1 of PfDA;
Art. 8, Paragraph 3 in relation with Article 242 and Article 244, p. 2 of the Labour Code;
CoM Decree No. 63 of 11 April 1991 (promulgated in State Gazette Issue 68 of 20 August 1991);
§ 1, Paragraph 4 of the Social Assistance Act (SAA, 07.05.1998);
§ 37 of the Social Assistance Act (promulgated SG, issue 120/2002; CoM Decree No. 70/17.02.2002);
Art. 36, Paragraph 3, p. 3 of SAA Rules of Implementation and Article 43 of the Supplementary Provisions, SAA Rules of Implementation;
CoM Decree No. 286/23.11.2007 amending Rules of Implementation of SAA;
§ 66 of State Budget Act;
Art. 12, point 5 and Article 42, point 2 of the Vocational Education and Training Act;
Working time, Vacation and Leave Regulation;
Regulation No.3 dated 14.05.1999 on the extra labour pay of the staff employed in the public education system;
Regulation No. 7/30.07.2004 on the rules to determine individual monthly salaries of secondary schools' staff;
Regulation No. 2/07.09.2006;
Regulation No. 6/19.08.2002 on the training of children with special educational needs;
Art. 18, Art.38, Article 39 and 49a of the Vocational Education and Training Act;
Art.7, Para 1, b.(a) (i) of the International Covenant on Economic, Social and Cultural Rights;
Art. 27 of the Vienna Convention on the Law of Treaties. 1969 (promulgated in State Gazette Issue 87 of 10.10.1987);
ILO 111 Discrimination (Employment and Occupation) Convention**, concerning discrimination in respect of employment and occupation;**
European Social Charter (revised);
Council Directive 2000/78/EC of November 2000

The Social Training Vocational Centers (STVC) are created with Decree No. 63/1991 of the Council of Ministers. Paragraph 1 of Decree No. 63 Supplementary Provision equals all pedagogic experts, i.e. trainers at STVC and public education system teachers. However, on the grounds of Article 4, Para 2 of PfDA, STVC tutors have been subjected to less favourable treatment as compared to tutors in the Ministry of Education system, regarding estimation of remunerations. STVC treainers provide general and vocational taining to 16+ students with proved decreased employability and children in risk. Key argument in support of the thesis that they have similar duties and obligations nut inequal pay for equal worl as compared to the teachers of the system of Ministry of

[45] The Decision has entered into force.

Education and Science is the fact that they pay contribuations for the Tutors' Pension Fund. When estimating payments' amount in all its components, e.g. basic labour remuneration, additional remuneration for working conditions and work with mentally retarded children and hearing and visually impaired children, and in implementation of the Regulation on free apparel and uniform apparel, direct discrimination by virtue of Article 4, Para 2 of PfDA has been committed against tutors working on labour contracts at STVC compared to tutors in auxiliary schools and vocational classes with the system of Ministry of Education and Science, and also compared to the tutors in auxiliary schools. The discrimination is committed by the Minister of Labour and Social Policy, who has breached Article 3 of the Social Security Code, settling public relations in the field of social assistance in the Republic of Bulgaria and has treated less favourably the pedagogical staff of STVC.

Constituted parties:

1. Teachers' Staff at STVC "Sveti Georgi" – Plovdiv, complainant;
2. Ministry of Labour and Social Policy, represented by Minister Emiliya Maslarova, defendant;
3) Ministry of Education and Science, represented by Minister Ass. Prof. Daniel Valchev, interested party;
4) Ministry of Healthcare, represented by Minister Prof. Gaydarski, interested party;
5) Council of Ministers of the Republic of Bulgaria, represented by the Prime Minister Sergey Stanishev, interested party.

Alleged violation:

The collective complaint to the Commission for Protection against Discrimination is signed by 26 teachers at STVC "Sveti Georgi" – Plovdiv, with alleged grievances for discrimination and unequal treatment of those teachers compared to teachers employed in the Ministry of Education and Science system, regarding their status and labour pay. The unequal treatment was expressed, as follows:

By CoM Decree No. 63 of 11 April 1991 (promulgated in State Gazette Issue 32 of 23 April 1991, amended SG, issue 68 of 20 August 1991), the existing till 1st September 1991 training vocational enterprises "Trud" and the boarding houses with them have been turned into social training vocational centers (STVC) for qualification and prequalification of persons with decreased employability, functioning as budget-funded legal entities.
Paragraph 1 of CoM Decree No. 63 Supplementary Provisions envision equal rights and obligations of STVC employees and teachers employed in the Ministry of Education and Science (MES) system.

By the end of 2002, STVC "Sveti Georgi" was subordinated to the Social Assistance Directorate with MLSP. As of 01.01.2003, the nine STVC became independent units with the respective municipality. The regulation was introduced with § 37 of the Social Assistance Act (promulgated in State Gazette Issue 120/2002; CoM Decree No. 70/17-02.2002).

The complainants allege that in the past years, there were major differences in their labour pay compared to the pay of teachers employed in the system of MES, e.g.: 1. their average gross salary is lower; 2. their annual paid leave is shorter by 2 days; 3. They are not entitled to extra pay under Regulation No. 3/1999 (promulgated in State Gazette Issue 47/1999 and amended in 2003); 4. They get lower allowance for apparel – within BGN 50; 5. They do not get allowance for work at specific conditions in accordance with Regulation No. 7/30.07.2004 (promulgated in State Gazette Issue 70 /2004); 6. They get lower class for work history.

It is also alleged that those grievances have been stated many times before the relevant institutions' the problem, however, remained unsolved. That fact was confirmed by the reply of MLSP.

According to the statements of Ministry of Education and Science and MLSP, for the pay levels of teachers employed in the two systems, CPD Panel established substantial differences for trainers employed in the nine STVCs, compared to teachers in the system of MES. The comparison shows a more favoured position of the pedagogical staff of the public education system.

According to the statement of MLSP, the capacity of those training facilities is 1347 persons, in total. By the end of 2006/2007 academic year, 778 persons with specific needs have been trained. The capacity of STVC - Plovdiv is 250 persons but in 2006/2007 171 were trained there.

The Constitution stipulates that the persons with physical and mental disabilities fall under the special protection of State and society, and that State as an institution provides conditions for them to exercise their right to work. Undoubtedly, their socialization and access to the labour market is connected to process of training and gaining vocational qualification according to their specific needs, providing equal opportunities in exercising the right of labour and pay. Both groups of teachers share similar job functions, training children with specific needs or chronic diseases, providing counseling, correcting and rehabilitating activities.

The issue has two aspects: on one hand, the right of training and vocational qualification of persons with specific needs, to whom State owes special protection, is guaranteed; on the other hand, in order to guarantee that right and meet their special educational needs, the State has to take care of the qualified teachers, providing them with better working conditions and decent pay.

Dispositive

ESTABLISHES that in the estimation of labour pay in its components, extra pay for work under difficult working conditions, work with mentally retarded children and children with other disabilities (visually or hearing-impaired) over 16, and regarding the Regulation for free work apparel, direct discrimination by virtue of Art.4, par.2 of the Protection from Discrimination Act has occurred over teachers employed on labour contract in the social training vocational centers, in particular over the teachers in Sveti Georgi STVC, who have been treated less favourably compared to teachers in auxiliary schools and professional classes with them in the system of Ministry of Education and Science at comparable circumstances. It was established that teachers employed at the social training vocational centers (STVC), perform similar job and functions with the same vocational qualification, education, skills and knowledge, providing pedagogical and vocational training for hearing, visionally or mentally impaired persons, similar to their colleagues, working in the auxiliary schools and classes for vocational training.

The discrimination is committed by the Minister of Labour and Social Policy who had infringed also Article 3 of the Social Insurance Act, regulating public relations concerning social assistance of citizens of the Republic of Bulgaria, and has put in less favourable position the pedagogical staff, employed at social training vocational facilities.

The Specialized Permanent Sitting Panel respects as justified the collective complaint of pedagogical staff at Social training vocational center for qualification and prequalification of persons with decreased employability (former STVC) "Sveti Georgi", Plovdiv.

By virtue of Article 76, Paragraph 1, point 1 of the Protection from Discrimination Act gives compulsory instruction to the Minister of Labour and Social Policy to prevent and eliminate the infringement, established in this act, on the principle of equal treatment of teachers in

STVC “Sveti Georgi” and in the other 8 specialized facilities in the country, and also to remove the harmful consequences for them, taking the necessary measures to regulate complainants’ adequate labour pay.

Provides the Minister of Labour and Social Policy with 2-months period to inform the Commission for Protection against Discrimination on the implemented measures and obtained results that have stemmed from the termination of established infringement.

By virtue of Article 47, point 6 of the Protection from Discrimination Act recommends to the Council of Ministers to suggest legislative amendments, approximating current Bulgarian legislation on pedagogical staff equal pay in all educational facilities, in accordance with the “equal pay for equal for equal work or work of equal value”, including extra pay for work at specific conditions, equal class for work history and equal allowance for apparel. CPD Recommends to the Council of Ministers to equalize by legislative amendments the entitled annual paid leave of pedagogical staff working at social training vocational centers and the pedagogical staff at auxiliary schools in the system of MES.

By virtue of Article 67, Paragraph 4 of the Protection from Discrimination Act in relation with Decree No. 85 of 17 January 2007 for EU Organization and Cooperation, this decision should be sent to the Council of Ministers as interested party for intelligence and to the Ministry of Finance, having reference to the survey.

This decision is liable to appeal before the Supreme Administrative Court within 14 days of delivery to the parties by virtue of the provisions of Article 68, Paragraph 1 of the Protection from Discrimination Act.

Compendium

CASE-LAW OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

First Edition

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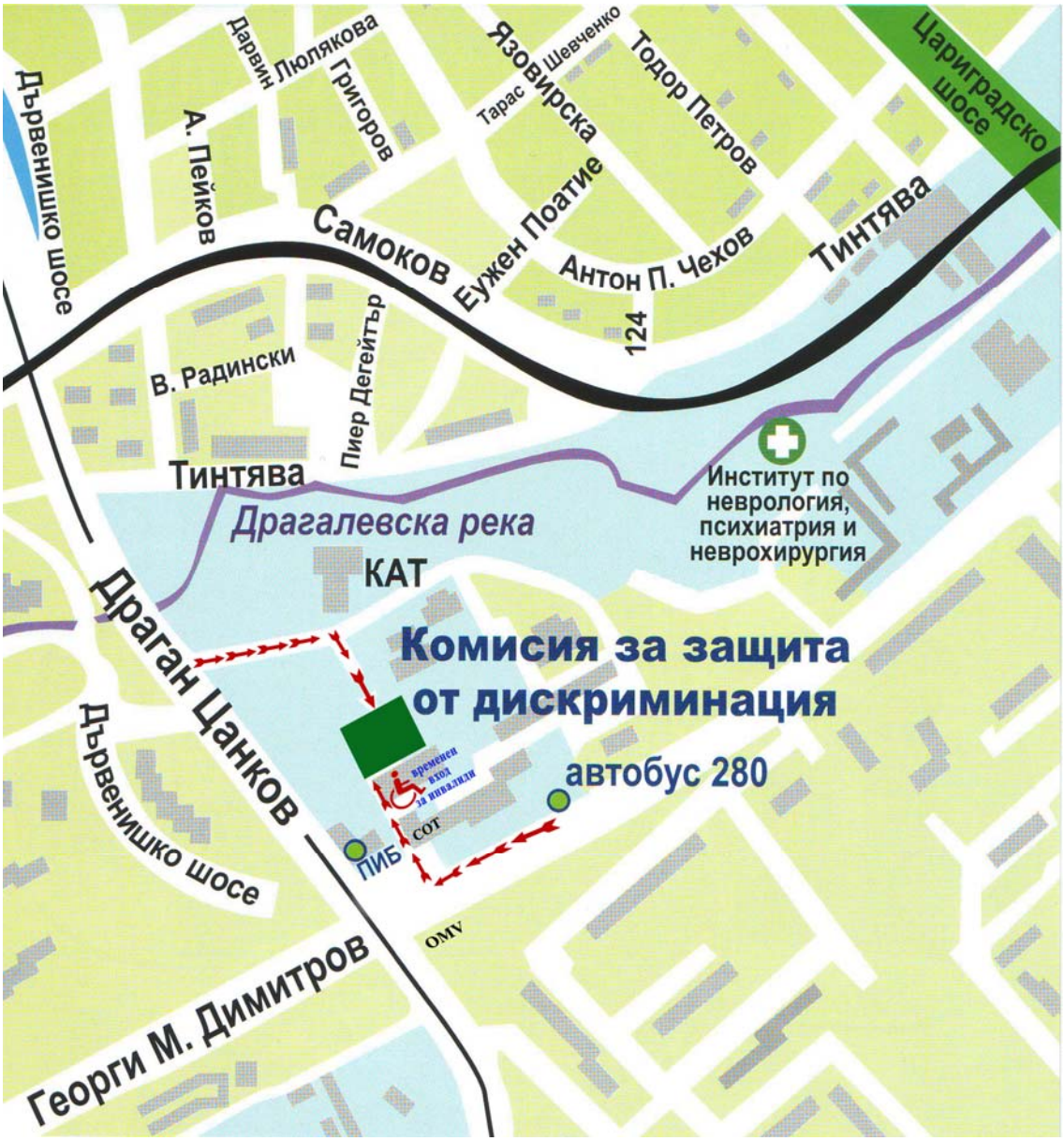
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