

КОМИСИЯ ЗА ЗАЩИТА  
ОТ ДИСКРИМИНАЦИЯ



COMMISSION FOR  
PROTECTION AGAINST  
DISCRIMINATION

# ANNUAL REPORT OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION OF THE REPUBLIC OF BULGARIA, 2010 SUMMARY

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## Introduction

The Commission for Protection against Discrimination (CPD) is an independent specialised state authority for prevention of discrimination, protection against discrimination and ensuring equal opportunities, vested with wide powers, as stipulated in Article 47 of the Protection against Discrimination Act (PaDA), including preventive and awareness-raising functions on all discrimination-related matters.

In the end of 2010, the Commission for Protection against Discrimination decided to apply for ICC Accreditation as a National Human Right Institution. The Sub-committee on Accreditation will review the application during its next session in May 2011.

In 2010, 838 signals and complaints were filed with the Commission. The number of initiated case-files scheduled for consideration is 268. During the year, CPD Specialized and Ad-hoc sitting panels held 388 hearings on the investigated case files. They delivered 293 legally binding decisions. In 2010, 3821 individuals obtained independent legal assistance at CPD front office in Sofia and at the Regional representative offices in the country, open info days and on hotline.

The analysis of lodged complaints and signals indicates an increase of cases where more than one protected ground was breached, a phenomenon known as multiple discrimination.

The investigation of alleged multiple discrimination is more complex since it requires gathering of various types of evidence, involvement of external experts and a longer procedure because of the factual and legal complexity of the case.

Another prominent trend is the increase of complaints for discrimination when exercising the right to work, harassment на workplace and on gender ground. Plaintiffs show raised awareness of antidiscrimination law and fundamental rights, mostly in result of the information and out-reach campaigns carried out by CPD in previous years.

The Commission is empowered in relation with adoption, abrogation and amendment of normative acts that are incompatible with domestic and international equal treatment standards. CPD decreed a number of recommendations to different central and local authorities: National Assembly, Council of Ministers, Ministry of Healthcare, Ministry of Education, Youth and Science, Ministry of Labour and Social Policy, Ministry of Foreign Affairs, Ministry of Regional Development and Public Works, Ministry of Justice, Bulgarian National Bank, State Energy and Water Regulatory Commission, Sofia municipal council, the municipalities of Plovdiv, Vidin, Sozopol and Gabrovo.

Another powerful tool is CPD mandate to issue mandatory instructions imposing legally banning request for termination of any breach of the Protection against Discrimination Act (PaDA) and for prevention and elimination of their results. In 2010, mandatory instructions were delivered to the Ministry of Healthcare, the Ministry of Education, Youth and Science, the Ministry of Justice and other institutions.

CPD work would not be effective if it did not ensue control over the enforcement of its decisions, compulsory administrative measures and monetary fines.

The Commission has modern equipment and highly qualified experts. As part of its specialized administration, CPD has a network of Regional representatives in 17 district cities. Their awareness-raising and consulting activities contributed to facilitate the access of discriminated persons to adequate legal assistance and counseling.

In 2010, CPD continued its cooperation and joint initiatives with public authorities, district governors and municipality mayors.

As a Promoter or Partner, CPD carried out several national and international projects - Progress to Equality: National Effective and Innovative Practices to Prevent and Combat Discrimination, Discrimination Free Schools, The E-Tolerance Test and others.

CPD has active interactions in many international forums - the Organization for Security and Cooperation in Europe, the Council of Europe, the European Commission against Racism and Intolerance, the Fundamental Rights Agency, the Advisory Committee for Gender Equality, EQUINET – the European network of equality bodies, etc.

**In 2010, the Commissioner for Human Rights to the Council of Europe Thomas Hammarberg expressed his respect for the role and importance of the Commission for Protection against Discrimination, addressing an open letter to the Prime Minister, the Chair of the National Assembly and CPD Chairman.**

## Section 1

# PROCEEDINGS BEFORE THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

## 1. Proceedings before CPD

In 2010, five self-referral reports, 838 complaints and signals and 69 addendums have been lodged with the CPD.

The self-referral reports have been discussed and considered at hearings of the 9-Member Chamber and on four of the cases proceedings have been initiated.

The following table gives idea of the numbers of complaints and signals by years:

<b>Nº</b>	<b>Type</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>1</b>	Complaints	26	279	566	673	967	777
<b>2</b>	Signals	1	10	79	65	72	61
<b>3</b>	Total	27	289	645	738	1039	838

In 2010, 268 case files were initiated (32% of all lodged complaints and signals). On them, CPD Chairman issued 647 orders.

CPD has forwarded 432 complaints and signals (51% of all lodged writs) to other administrative bodies authorized to tackle the issue, by virtue of Article 31, para 1 of the Administrative Procedure Code. In that manner, CPD provided assistance to individuals and organizations seeking to solve their legal issues.

CPD provided short instructions to plaintiffs (by virtue of Article 31, para. 4 of the Administrative Procedure Code) in 239 cases (28 % of all lodged writs).

By virtue of Article 47, item 9 of the Protection against Discrimination Act and Article 21, it.1 of CPD Rules of Organization and Operation, victims of discrimination received independent assistance in 1530 occasions. That estimation does not cover the receptions of CPD Regional representatives in 17 cities and open receptions held in various towns.

### Initiated case files

In 2010, 268 case files were initiated under PaDA Article 50, for alleged discrimination. Here, we present statistics by Panels, by protected grounds and by number of initiated case files compared to previous years.

#### Number of case-files by years:

2005 - 37

2006 - 183

2007 - 215

2008 - 278

2009 - 299

2010 - 268

### Case-files by years

By virtue of PaDA and the Rules of Proceedings, initiated case files are distributed for consideration by Specialized Sitting Panels by protected grounds. The following tables give comparative review of the distribution of case files by Panels and by years:

FIRST panel specialized for discrimination on grounds of ethnic origin and race		
number of case-files by years		
	Ethnic origin	Race
2006	48 case files	0
2007	57 case files	0
2008	23 case files	2 case files
2009	18 case files	0
2010	22 case files	1 case file

Second panel, specialized for discrimination on grounds of gender, human genome, exercising the right to work, trade union membership:				
number of case-files by years				
	Gender	Human genome	Exercising the right to work	Trade union membership (Labour Code, Article 8 Para 3)
2006	3	0	17	8
2007	10	0	37	0
2008	10	1	11	4
2009	6	0	10	10
2010	10	1	26	1

Third panel, specialized for discrimination on grounds of nationality, citizenship, personal situation (since 21.01.2009), origin, religion and belief:					
number of case-files by years					
	Nationality	Citizenship	Personal situation (since 21.01.2009)	Origin	Religion and belief
2006	0	7	-	0	4
2007	0	4	-	1	1
2008	1	5	-	2	4
2009	4	7	53	0	1
2010	1	3	51	1	2

Fourth panel, specialized for discrimination on grounds of education, conviction, political affiliation, personal situation, social status, property status: <sup>1</sup>						
number of case-files by years						
	Education	Conviction	Political affiliation	Personal situation	Social status	Property status
2006	8	0	2	6	2	2
2007	6	1	5	7	3	2
2008	1	0	0	65	12	1
2009	7	0	5		8	3
2010	2	0	4		3	2

Fifth Sitting Panel, specialized for discrimination on grounds of disability, age, sexual orientation, marital status:				
number of case-files by years				
	Disability	Age	Sexual orientation	Marital status
2006	26	7	7	2
2007	25	10	0	0
2008	28	20	1	1
2009	49	24	6	1
2010	34	20	0	0

Five-member Sitting Panels for multiple discrimination, разглеждат initiated case files on more than one ground, number of case-files by years:	
Year	number of case-files by years
2005	19
2006	43
2007	44
2008	58
2009	95
2010	80

Year	Delivered decisions by years, by all CPD Sitting Panels on initiated case files	Decisions with effective rulings in essence	Established direct discrimination by virtue of PfDA Art.4, para 2	Established indirect discrimination by virtue of PfDA Art.4, para 3
2006	74	48	15	4
2007	96	69	24	6
2008	222	131	63	3
2009	244	160	68	13

<sup>1</sup> Note: by 21.01.2009 those two grounds were considered by IV Panel

2010	293	208	103	8
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Year	Number decisions establishing harassment by virtue of PfDA §1, items 1 and 2	Number decisions establishing victimization by virtue of PfDA §1, item 3	Number decisions establishing incitement to discrimination by virtue of PfDA §1, item 5	Number decisions that do not establish discrimination
2006	4	0	2	25
2007	7	1	1	36
2008	41	6	0	72
2009	21	2	1	71
2010	23	4	1	81

### Terminated proceedings due to:

Year	Withdrawal of the complaint by the wronged person	Failure to eliminate irregularities in the writ	CPD is not the competent authority on the matter	Number case files sent to the Prosecutor due to evidence for a crime – PaDA Art.59, para 4
2006	3	7	3	1
2007	4	2	2	0
2008	5	58	9	3
2009	14	10	3	1
2010	22	26	19	5

## 1.1. Sitting Panels

### 1.1.1. First Specialized Permanent Panel

First Permanent Specialized Sitting Panel tackles cases of discrimination on the grounds of ethnic origin and race.

In 2010 the Panel delivered 15 decisions on 14 case files for ethnic discrimination and 1 case for racial discrimination. It delivered 10 decisions, approved one conciliation agreement between the parties and in one case found indirect discrimination on the ground of ethnic origin. The Panel delivered three instructions to competent public authorities for seizure of established infringements and three recommendations for prevention of future infringements.

The decisions fall to the spheres of exercising the right to work (6), access to goods and services (3), personal interactions (3) and legislature (3).

The distribution by plaintiffs' gender favours men (8:7). Plaintiffs are Bulgarian and foreign citizens alike, persons from ethnic minorities and from the majority population. Often, ethnicity turns out to be unreasonable impediment for persons' professional fulfillment and evaluation, hampers their career growth and violates the equal pay for work of equal value principle.

### 1.1.2. Second Specialized Permanent Panel

Second Permanent Specialized Sitting Panel tackles cases of discrimination on grounds of gender, human genome, exercising the right to work and trade union membership.

In 2010, the Panel delivered 23 decisions on 22 initiated case files alleging discrimination, 6 of them on gender, 4 on the ground of trade union membership and 12 for discrimination when exercising the right to work, 11 of them for alleged breach of equal pay for work of equal value principle. With its 17 delivered decisions, the Panel established six cases of direct discrimination: 1 for sex discrimination, 3 on the ground of trade union membership and two for unequal treatment and breach of the equal pay for work of equal value principle. The Panel endorsed two agreements between the parties.

The distribution by plaintiffs' gender favours men (9:7).

Equal treatment suggests lack of any direct or indirect gender discrimination but deeply rooted prejudices often hamper gender equality. Frequently, apparently neutral behaviour draws negative gender images that undermine their dignity and constitutes discrimination. Multiplication of such messages through the media is banned by the Radio and Television Act.

#### **1.1.3. Third Specialized Permanent Panel**

Third Specialized Permanent Panel is specialized for discrimination on grounds of nationality, citizenship, personal situation (as of 21.01.2009), origin, religion and belief.

In 2010, the Panel delivered 67 decisions on 66 initiated cases, 4 of them on citizenship, 4 on the ground of nationality, 1 on the ground of religion and 57 case files for discrimination on the ground of personal situation.

In 40 decisions, the Panel established direct discrimination in 13 cases, 2 on the ground of citizenship, 1 on nationality, 10 on the ground of personal situation and one case of indirect discrimination on that ground. The Panel endorsed three agreements between the parties. In four cases, plaintiffs complaining of citizenship and nationality based discrimination were lodged by foreign citizens. Gender distribution favours women (38:26).

#### **1.1.4. Fourth Specialized Permanent Panel**

Fourth Permanent Specialized Sitting Panel tackles discrimination on the grounds of education, conviction, political affiliation, personal situation\*, social status and property status. (By 21.01.2009 it was considered by IV Panel, afterwards complaints for discrimination on personal situation were considered by III Panel.)

In 2010, the Panel delivered 33 decisions on 29 case files, 11 cases for discrimination on social status, 4 on the ground of political affiliation, 2 on the ground of property status, 6 on the ground of education and 5 case files on the ground of personal situation. The Panel delivered 26 decisions establishing 15 cases of direct discrimination on the grounds of social status (6), political affiliation (2), property status (1), education (2) and personal situation (4). Twelve instructions for termination of the infringements were decreed and 4 recommendations for prevention of future infringements. Distribution by gender is in favour of men (14:11), there are two collective complaints and two cases initiated by legal entities.

Leading is the ground of social status. The term "social status" is not explicitly formulated in PaDA but can be defined as the place of an individual in the structure of society and reflects the attitude and evaluation of his social behaviour and functions. Therefore, key elements of social status are person's vocation, workplace, occupational position, etc.

#### **1.1.5. Fifth Specialized Permanent Panel**

Fifth Permanent Specialized Sitting Panel considers cases of discrimination on grounds of disability, age, sexual orientation and marital status.

През 2010 the Panel delivered 73 decisions on 71 initiated case files с оплаквания за discrimination, 21 on the ground of age, 46 on the ground of disability, one on the ground of marital status and 4 for discrimination on the ground of sexual orientation. С постановените 58 decisions in essence The Panel established 36 cases of direct discrimination, of them 13 on the ground of age, 19 on the ground of disability, 4 on the ground of sexual orientation, and three cases of indirect discrimination on the ground of age (2) and disability.

The Panel endorsed eight agreements between the parties. It delivered 30 instructions for termination of found infringements and 12 recommendations for prevention of future infringements. Gender distribution of plaintiffs favours men (39:27).

By virtue of PaDA Art.5, the construction and maintenance of architecture environment impeding the access of persons with disabilities to public utilities and spaces constitutes discrimination. Complaints for inaccessible architecture environment filed by individuals and associations soar high. In spite of the shared understanding in society that urban environment has to be accessible for all, minimum standards often are not met, challenging the integration of persons with disabilities.

In 2010, Fifth Specialized Panel delivered 27 decisions related to inaccessible environment and 8 agreements. Thirteen decisions, of them one case of harassment establish direct discrimination on the ground of disability through maintenance and construction of architecture environment impeding the access of persons with disabilities to public spaces.

On several occasions, failure to meet the requirements of PaDA Articles 10 and 11, Para 1 by public authorities leads to discrimination of large groups or persons and children with disabilities.

#### **1.1.6. FIVE-MEMBER Expanded Panel**

By virtue of PaDA Art.48, Para 3, multiple discrimination complaints are considered by a large five-members panel.

In 2010, CPD five-members panel decreed 76 decisions on 72 initiated case files on various protected grounds, establishing 31 cases of discrimination and endorsing three agreements. Of those, 20 decisions find multiple discrimination and four cases of harassment. The remaining 11 decisions discover direct discrimination on a single protected ground. Three cases find harassment, one case finds harassment and incitement to discrimination, and one case relates to direct discrimination and victimization.

The Panel delivered 52 decisions in essence establishing 29 cases of direct discrimination and 2 cases of indirect discrimination, decreed 21 instructions for termination of infringements and gave 7 recommendations for prevention of future infringements. Cases relate mostly to the ground of personal situation (11), education (9), age (6) and equal number on social status and political affiliation (5 each).

#### **1.1.7. AD HOC Panel**

By virtue of Article 11, Para 4 of Section Three "Sitting Panels" of the Rules of Proceedings before the Commission for Protection against Discrimination, the Chairman shall make changes and substitutions in the Permanent Sitting Panels and to create Ad Hoc Sitting Panels.

In 2010, CPD Ad Hoc Panel delivered 5 decisions on 4 initiated case files, two of them on self-referral. They referred to complaints of disability and ethnic and racial discrimination and gender and sexual harassment. The AD HOC Panel established one case of harassment and direct discrimination on the ground of disability and one case of ethnic-based harassment and indirect discrimination.

## **1.2. Mediation procedures at the Commission for Protection against Discrimination**

A priority for 2010 was introducing mediation as an alternative dispute settling method.

Therefore, in a number of occasions, parties were invited to settle their dispute through mediation. In three of them, parties agreed and a procedure by virtue of the Mediation Law took place. In 2011, the Commission will continue to apply the methods of mediation.

## **1.3. Monitoring of by-laws, ordinances and draft-laws for compliance with the equal treatment principle**

The Treaty establishing the European Community to which Bulgaria is a party by virtue of Article 5, Para 4 of the Constitution, constitutes an international treaty. Following its ratification by virtue of Article 85, Para 2 of the Constitution, the Treaty provisions have supranational, direct and universal bearing over the domestic legislation. Article 13 of the Treaty entitles the European Commission to take adequate measures for combating discrimination on the grounds of gender, race or ethnic origin, religion or belief, disability, age and sexual orientation, as reflected in the respective Directives.

Effective application of equal treatment principle requires adequate legal protection. C Article 13 of Directive 2000/43/EC obligates EU Member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, and to ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.

By virtue of PaDA Article 40, Para 1 and 2, the Commission for Protection against Discrimination is an independent specialised state body for prevention of discrimination, protection from discrimination and providing equality of chances, that exercises control over the implementation and observance of this law or other laws settling the equality of treatment.

According to the delegated special competences of that equality body, it is vested with specific judicial powers. Those powers are provided by PaDA Art.47, items 6 and 8, entitling the Commission to extend proposals and recommendations to the state and municipal bodies for termination of discrimination practices and for revoking their acts issued in violation of this or other laws settling equality of treatment give opinion on draft normative acts for their compliance with the legislation for prevention of the discrimination, as well as recommendations for adopting, revoking, amendment and supplement of normative acts, as well as to prepare independent reports and make recommendations on all issues related to the discrimination (item 11).

Therefore, in application of its powers under PaDA Article 40 for monitoring over the application and observation of PaDA or other equality laws, since 01.01.2007 CPD shall comply with the respective provisions of *acquis communautaire*.

Undoubtedly, by virtue of Article 14, Para 1 of Directive 2000/43/EC Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 16, Para 1 of Directive 2000/78/EC, Article 23, a and b of Directive 2006/54/EC and Art.13, a and b of Directive 2004/113/EC, all laws, by-laws and administrative provisions that contradict prima face the equal treatment principle shall be reviewed. By virtue of both *acquis communautaire* and the domestic law, they should be objectively justified and proportionate.

### **1.3.1. Recommendations of CPD Specialized Panels to central and local governments for adoption, abrogation and amendments of by-laws**

By virtue of PaDA Article 47 items 6 and 8, CPD Specialized Panels delivered a number of recommendations to central and local governments for adoption, abrogation and amendments of by-laws, due to their incompatibility with the domestic and international antidiscrimination law:

### **RECOMMENDATION to the National Assembly and the Council of Ministers for amendments to the Law on the Prevention and Disclosure of Conflict of Interests**

Decision №167/2010 on case № 59/09 FIVE-MEMBER Expanded Panel reviewed a complaint of the provision of the Law on the Prevention and Disclosure of Conflict of Interests Article 21, lodged by 14 medical doctors in their capacity of directors of the National health insurance fund (NHIF) and the Regional

health insurance funds (RNIF), who believed that the provision restricts the free exercise of their jobs/occupation and constitutes direct discrimination on the grounds of education, personal situation and social status.

The Panel established that the provision of Art.21, Para 1 constitutes direct multiple discrimination on the grounds of social status and education. It prevented the respective officials to enter contracts for executive functions for the duration of 12 months in trade companies and corporations, with respect to which they had powers or obligations in the past year. De facto, they were only allowed to work as employees or general practitioners.

With the objective to ban discrimination and restore the equality of treatment, CPD FIVE-MEMBER Expanded Panel, by virtue of PaDA Art.47, item 6,

**RECOMMENDS** the Council of Ministers to adopt and pass to the National Assembly a draft-law amending the Law on the Prevention and Disclosure of Conflict of Interests, curtailing the application of discriminatory restrictions against NHIF and RNIF directors who are due to resign from their positions.

**RECOMMENDS** National Assembly, by virtue of PaDA Art.47, item 6 to adopt amendments to the Law on the Prevention and Disclosure of Conflict of Interests, curtailing the application of discriminatory restrictions against NHIF and RNIF directors, who entered in office before the enforcement of the law and who have resigned or are due to resign from their position.

**RECOMMENDATION to the Council of Ministers in regard with the Draft Law on Pre-School Education and Primary School Education, approved with CoM Decision № 205 of 30.03.2009, passed to the 40<sup>th</sup> National Assembly on 30.03.2009**

In decision № 4/2010 FIVE-MEMBER Expanded Panel reviewed a collective complaint lodged by an initiative committee of parents of children studying or willing to study at 99 hospital school, the Association of parents на children with cerebral palsy “St. Sofia, Vyara, Nadejda I Lyubov” and the teachers of 99 Primary hospital school “Prof. Vasilka Tomova” for protection against discrimination on disability ground when fulfilling the right to education and the right to work, through the adoption of §10 of the Draft Law on Pre-School Education and Primary School Education (the “draft-law”), foreseeing to close the existing hospital schools. The Panel established that plaintiffs suffer reasonable fear and concern against the adoption of §10 of the draft law and that it would create unwanted and threatening environment for the children with special educational needs and their parents. The Panel underlines that the closure of hospital schools endangers the right of children with special educational needs to be treated equally in the fulfillment of their fundamental rights and legal interests – firstly, the right to living and health of children with chronic diseases or severe disabilities, secondly, the right to quality education of children with special educational needs due to disability, and thirdly, the right to work and employment of the parents of children with special educational needs.

After in-depth analysis, the Panel stated that closure of hospital schools and distant education, foreseen in Article 103 of the draft law, would breach Article 17.2 and Art.E of the European Social Charter (Revised), in regard to children with disabilities and unequal treatment in the access to education.

On those reasons and to prevent discrimination of children with special educational needs, by virtue of Art.47, item 6 of PaDA, the Five-member Panel:

**RECOMMENDS** the Council of Ministers to note the findings made by the Commission for Protection against Discrimination on complaint lodged by initiative committee of parents of children studying or willing to study at 99 hospital school, the Association of parents на children with cerebral palsy “St. Sofia, Vyara, Nadejda I Lyubov” and the teachers of 99 Primary hospital school “Prof. Vasilka Tomova” and to ensure equal treatment of children with special educational needs depending on their specific diagnosis.

**RECOMMENDS** the Council of Ministers to ensure adequate support and protection for the education of children with special educational needs and avoid discrimination against children in school age and their parents while exercising the right to work; to ensure free access to quality education and adequate training of children with special educational needs due to chronic diseases or multiple disabilities from the first day of their diagnosing, in order to guarantee their social integration and equal chances to participate in public life.

## **1.4. Opinions of the Commission for Protection against Discrimination on draft-laws passed by the 41 National Assembly na Republic of Bulgaria**

### **OPINION**

**To the Chair of the Legal Affairs Commission and the Commission on Human Rights, denominations, complaints and citizens' petitions with the 41 National Assembly of the Republic of Bulgaria**

**REGARDING: draft-law amending the Protection against Discrimination Act, № 002-01-31/30.04.2010, passed by the Council of Ministers**

1. The Commission for Protection against Discrimination is an independent specialized state authority for prevention of discrimination, protection against discrimination and ensuring equal opportunities; the Commission considers and resolves cases of discrimination, establishes infringements of the equal treatment principles, decrees measures for termination of those infringements, provides independent assistance to the victims of discrimination and implements various other functions, as stipulated in Article 47 of Protection from Discrimination Act. In relation to its functional and substantial competence, the Commission for Protection against Discrimination is not a regulatory body issuing licenses, permits and registering and monitoring the regulatory regime in a certain sector, such as the State Energy and Water Regulatory Commission, the Council for Electronic Media and the Communications Regulation Commission; therefore, the suggested unified approach for restructuring of bodies with very different competences and functions is not appropriate.

The Commission for Protection against Discrimination investigates, considers and decides the case files (dossiers) submitted to it in three-member Boards specialized in various grounds and in five-member Boards in the cases of multiple discrimination. With the suggested reduction of Commission's Members from nine to five persons, the menace of CPD being incapable to function and execute its powers arises; for example, in case of a Member's absence due to long disease, business mission or other reasonable causes, as well as in conflict of interests, since the Commission would not be able to form a Five Member Panel to consider cases of multiple discrimination. In the past two years, those cases tend to grow in number and in 2008 formed 24 per cent, while by September 15, 2009 they were 28 per cent of the total number of case files for this year.

2. The number of complaints and signals that are lodged with the Commission for Protection against Discrimination continuously increases, hence, the case files and proceedings it has to process and resolve. Every year, since the Commission's establishment, the number of complaints and signals grows, by 119 per cent in 2007 as compared to 2006, by over 15 per cent in 2008 as compared to 2007; that trend continues in 2009, as well. In 2008, the initiated cases have been considered at 314 open hearings of the specialized Three-member Panels of the Commission; while for the period January 1<sup>st</sup> – October 30<sup>th</sup> 2009, the number of conducted open hearings was 278. The reduction of Commission's Members risks to defeat the consideration of complaints and signals for discriminatory treatment in the short term stipulated by the Law, i.e. survey should be conducted within 30 days, and puts in question the provision of efficient protection against discrimination, meeting the European and international standards in that field.

Meanwhile, the heavy workload of investigation and forming decision of the discrimination cases in conjunction with the reduced membership will pose a further challenge before the Commission for Protection against Discrimination, namely to prioritize some of its powers, at the expense of its other powers.

The reduction of Members would lead to Commission's existence de jure and failure to function in fact, which equals to actual non-implementation of Bulgaria's commitments as an EU Member State to designate and assist the effective functioning of a specialized body for protection against discrimination and promotion of equal treatment, by virtue of Council Directive 2000/43/EC of 29 June 2000 (Article 13), Council Directive 2004/113/EC of 13 December 2004 (Article 12), Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 (Article 20).

3. In numerous reports and Recommendations, the European Commission, the Council of Europe and the European Parliament call for strengthening the role of national antidiscrimination bodies – e.g. the European Commission's Progress and Monitoring Report for 2006, 2007, the Third and the Fourth Report on Bulgaria of the European Commission against Racism and Intolerance (ECRI), a Council of Europe Recommendations of 2004 and 2008 and the Resolution of the European Parliament of 27 September 2007. Those documents require Member States to provide their equality bodies with sufficient financial and human resources, and to support their administrative capacity building in order to efficiently implement their mandate in combating discrimination.

4. The disadvantaged groups of persons are most affected in times of financial and economic crisis and are also most often subjected to discrimination in the labour market and the other areas of socio-economic life. In Resolution S-10/1 of February 20, 2009 and Resolution A/HRC/12/L.25 of September 25, 2009 the UN Human Rights Council recommends to the Member States to refrain from reducing the capacity and powers of their national human rights bodies, and to strengthen and assist them in the implementation of their responsibilities in ensuring that those at risk of being most affected by the global economic and financial crises are protected in a non-discriminatory way.

5. Last but not least, the reduction of the Commission Members will considerably restrict the representation of various vulnerable communities in its Membership. Aside from being an international standard, the requirement for representation of the different vulnerable groups in the Commission Members reflects the Paris Principles - Resolution 1992/54 of the UN Commission on Human Rights and General Policy Recommendation No.2 of the European Commission against Racism and Intolerance (ECRI) with the Council of Europe, constitutes one of the most resolute national guarantees for the independence of the Commission for Protection against Discrimination.

6. We fully support the introduction of succession and continuity principle, which is a prerequisite for sustainability in the work of every independent body.

## **OPINION**

To the Chair of the Legal Affairs Commission to the 41 National Assembly на Republic of Bulgaria and Ministry of Justice

**REGARDING:** Draft-law amending the Penal Code, № 002-01-97/22.10.2010 passed by the Council of Ministers; in letter № 94-00-51 of 22.10.2010 the Deputy Minister of Justice requested an urgent opinion from CPD for compliance with antidiscrimination legislation of the Draft-law amending the Penal Code, approved in CoM decision dated 22.10.2010 and passed to the National Assembly.

At a meeting of 26.10.2010, the Commission for Protection against Discrimination discussed the draft law, in its part to fulfill the obligations of Republic of Bulgaria as an EU Member State, set forth in Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, and delivered the following opinion:

Предложените в пар. 10 and пар. 28 от the draft law изменения на Penal Code са by virtue of Article 1, пар. 1 от Framework Decision 2008/913/JHA. Proposed in para. 10 and par. 28 of the draft law amendments to the Penal Code are by virtue of Article 1, para.1 of the Framework Decision 2008/913/JHA. The amendments in Article 162 of the Penal Code shall provide extended protection by including all protected grounds by international law or treaty, which on the one hand provides a uniform standard of protection, regardless of the grounds, but on the other hand there are some risks regarding the practical application in the norm.

Those referred changes could strengthen and enhance the fight against certain forms of discrimination on all protected grounds protected by the inclusion of the means of penal law. The passed draft-law does not consider the following fundamental requirements of Council Framework Decision 2008/913/JHAEC, which are essential for fighting racism and xenophobia:

1. The draft-law introduces no change in the mode of determining sanctions for racial and xenophobic motivated crimes, other than those under Articles 162-166 of the Penal Code.

The provision of Article 4 от Framework Decision 2008/913/JHA requires in determining the punishment of racist and xenophobic motives, and for which any other crime outside of the hypotheses Article 1 and Article 2 thereof, be considered as an aggravating circumstance. In this direction are monitoring reports and recommendations to Bulgaria from several other international organizations and their bodies dealing with human rights and non-discrimination, as reports of the European Commission against Racism and Intolerance to the Council of Europe, the Commissioner for human rights at the Council of Europe, OSCE standards and recommendations, etc. The provision of Article 4 of Framework Decision 2008/913/JHA implies a change in the regime of determining sanctions (Art. 54 - Article 59 of the Penal Code), allowing the discriminatory motives the crime to be accounted in the individualization of sanctions.

2. The provision of Article 9, para 2 of Framework Decision 2008/913/JHA is crucial for combating cyber hate-crimes. The amendments foreseen in the draft law изменения do not include rules for the implementation of obligations under Article 9, para 2 of Framework Decision 2008/913/JHA, which will allow in practice the acts of racism and xenophobia in the Internet. For example: when sites or equipment are not within the territory of Bulgaria, they remain unpunished.

3. Provisions of Framework Decision 2008/913/JHA concerning liability of legal entities at this stage could be introduced by changes in other laws. Considering that the criminal liability of legal entities is another of our criminal justice system, while on the other hand, the norms of EU law are of autonomous nature and directly applicable in principle under certain conditions are potentially able to produce direct effect and therefore influence the penal law of the Member States, arises the need for expert opinion on whether the provisions of Article 5 - Article 6 of the Framework Decision 2008/913/JHA be introduced by rules in other laws or by rules in the Penal Code.

This question is not the exclusive domain of CPD. Lack of legislative measures to implement the requirements of Article 5 of Framework Decision 2008/913/JHA discourages compliance of our national antidiscrimination law with norms of Framework Decision 2008/913/JHA.

The Commission for Protection against Discrimination is a national contact point for the Office for Democratic Institutions and Human Rights to the OSCE on hate-crimes, and as such participates in the preparation of annual reports for monitoring hate-crimes in the OSCE region, therefore, this opinion may be included in the report 2010 We offer to your attention the above opinion at this stage of legislative procedure because the Commission for protection against discrimination was not included in the preparation and coordination of the draft law.

#### **1.5. Opinion of the Commission for Protection against Discrimination to the Constitutional Court на Republic of Bulgaria**

By virtue of the Protection against Discrimination Act, CPD does not have legislative initiative. Using a procedural opportunity to request to be constituted as an interested party in constitutional cases, when the subject of the dispute shows contradiction to Article 6 of the Constitution of the Republic of Bulgaria, in 2010 CPD stepped in a constitutional case.

## **OPINION**

Of the Commission for protection against discrimination to the Constitutional Court of the Republic of Bulgaria, on constitutional case № 13/2010

DEAR CONSTITUTIONAL JUDGES,

According to a group of MPs submitted a request under constitutional case № 13/2010, unjustified under Article 18, Para 2 of the Act on Development of Academic Staff of the Republic of Bulgaria, given the privilege of “medical universities or faculties and university hospitals, universities and schools of arts or sports departments, the military high schools and high schools of the Ministry of Interior”. They allow the scientific position of “chief assistant” to hold, without being acquired scientific degree „doctor”, while in all other high schools is unacceptable. That is a breach of Article 6 of the Constitution на Republic of Bulgaria.

By virtue of Article 6 of the Constitution, the Protection against Discrimination Act was adopted, and certain texts in several laws which have transposed EU anti-discrimination directives.

Employment issues and criteria for its implementation are of “major public relations” by virtue of Article 3, Para 1 of the Act on laws and by-laws.

The privilege given to the listed tertiary schools, can not be protected as it can be justified that “this provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (under Article 4, Para 3, PaDA and in relation with Article 7 of PaDA, transposing Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

The two laws - Law on Higher education (HEA) and Act on Development of Academic Staff of the Republic of Bulgaria (ADASRB), are intrinsically connected while this text of Article 18, Para 2 of ADASRB does not meet purpose of the Law on Higher Education (Art. 2).

Since taking the position “Chief Assistant” without formal academic degree “doctor” the text refers to the rules of the university, can not pass and considerations in relation to Article 21, Para 1, item 2 of HEA, where again repeat that academic self-government is the right of the university to provide the structure and activity with its own rules “by virtue of this Act” – HEA.

The requirements of Article 10, Para 2 and Article 27, Para 1 of ADASRB is unconstitutional, that require reviews, opinions and other materials, procurement of degrees and occupying positions of research to be published in English, since the official language is Bulgarian (Article 3 of the Constitution). This creates a privilege on the ground of education for persons, fluent in English, with respect to persons, speaking a language other than Bulgarian, which is in contradiction with Article 6, Para 2 of the Constitution. In this respect, it may be indicated the contradiction with Article 4.d of the Convention against Discrimination in Education, where countries are signatories and a party to this Convention must “ensure non-discrimination in training of teachers.”

According to the group of MPs substitution ADASRB § 7 of “Titles” with “academic positions” contradicts the rule of law (Article 4, Para 1 of the Constitution) – legal security. In this regard, we are pointing considerations that the right to equality of access to occupation or activity was violated (Art. 26 of PaDA.), as limiting the rights acquired in connection with other conditions (no requirement for the occupation of the positions with protection of “academic degree doctor”) as personal and social status. In that sense, the provisions of § 7, ADASRB contradicts Article 6, Para 2 of the Constitution.

## **JUDICIAL CONTROL AND CONTROL OVER THE IMPLEMENTATION OF CPD RULINGS**

In 2010, CPD decreed 293 decisions. Against 137 of these decisions complaints were appealed, sent from the CPD to the Supreme Administrative Court (SAC) together with certified copies of case files on the

appealed decisions in accordance with the requirements of Article 152, Para 2 and 3 of the Administrative Procedure Code.

In 2010, Counsels of the Commission participated in 139 hearings in you. In nine cases in administrative courts in Sofia, Plovdiv and Varna Commission has participated as an intervener attracted or interested party under Article 47, Para 5 of PaDA.

The Supreme Administrative Court has issued in the year 141 decisions and definitions of complaints against decisions of the CPD, of which 60 decisions were of 3-Member Chamber and 51 decisions were of 5-Member SAC Chamber. SAC Issued 30 definitions, 8 of which are of 5-Member Chamber, and the remaining 22, 3-Member SAC Chamber.

Of the 60 decisions set forth by the 3-Member SAC Chamber, 37 leave in force decisions of the CPD (61 per cent of the decisions of the 3-Member SAC Chamber); 23 repeal of the CPD decisions, 16 of them are completely abolished and 6 - in part, and one decision is referred back to the 3-Member SAC Chamber for reconsideration of the CPD.

In total, 51 decisions, delivered by 5-Member SAC Chamber, were allocated as follows: 30 decisions put into effect decisions of the 3-Member Chamber, which rejected complaints against decisions of the CPD (i.e. 58 per cent of decisions of the 5 - Member SAC Chamber maintain the decisions of the 3-Member SAC Chamber, confirming the decisions of the CPD), 15 decisions put into effect decisions of the 3-Member Chamber, which is overruling decisions of the CPD (29% of the 5-Member SAC Chamber's decisions); 3 decisions put into effect decisions of the 3-Member Chamber, which partially revoke decisions of CPD (0,6% of the 5-Member SAC Chamber's decisions); one decision repeals decision on 3-Member SAC Chamber and returned for reconsideration of the CPD; one decision repeals decision on 3-Member SAC Chamber and returned it for reconsideration to the CPD, one decision partially annulled decision on 3-Member Chamber and partially the decision of the CPD, one decision repeals decision on 3-Member Chamber, which annulled decision of the CPD and rejected complaint of the plaintiff by 3-Member Chamber of the Supreme Administrative Court .

There were 98 pending cases as of 31.12.2010 - announced to solve cases before the scheduled three-Member and 5-Member Chamber or pending formation and scheduling.

## **Control over the Implementation over CPD Acts and Decisions**

In 2010, the Commission for Protection against Discrimination ruled several decisions that emphasize the need to change the legislative framework in order to prevent discrimination in various spheres of public life - education, social affairs, etc. Also, during the reported period, a number of recommendations were delivered. Several key examples are provided below.

A recommendation of the CPD for abrogation of the discriminatory provision of Article 9 of the Academic Degrees and Titles Act (ADTA) was put in effect, imposing age restrictions on granting the title Assistant (35 years) and Fellow (up to 40 years). After an analysis, it was found that the provision of Article 9 does not comply with Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The CPD reached the conclusion that the provision of Article 9 of the ADTA is discriminatory and by virtue of PaDA Art.47, item 8 recommended the Council of Ministers to draft and pass to the National Assembly amendments to ADTA. With the adoption of the Act on Development of Academic Staff in the Republic of Bulgaria (promulgated, SG. 38 May 21, 2010), ADTA was repealed and In that manner discriminatory provision of Article 9, imposing age restrictions, are no longer in force.

**In 2010, the CPD ruled 123 enforceable decisions.** These identified cases of discriminatory acts are more compared to 2009. Continues the trend of imposing several compulsory administrative measures and sanctions in one decision. That greatly increased the workload in the course of enforcement proceedings in each case. Decreed decisions require various and multifaceted actions by responsible persons under legal supervision of their implementation. These actions ranged from a change in the legislative framework in various walks of life to the termination of the violation and reinstatement of initial situation.

During the reporting period continued control and implementation of imposed compulsory administrative measures. Mandatory prescriptions were delivered for employers regarding the exercise of their activity.

The CPD had many different compulsory administrative measures depending on the nature of the case. This determined the nature of and follow-up implementation.

There is a continuous need for increased resources for effective and timely implementation of control. So is the practice of multiple mandatory directives imposed by the specific duties of subjects responding increased in volume. Also executive producing one significant decision to extend the fact that increasing the number of taxable entities or sanctioned.

During the reporting period the committee and continue to exercise its legal power to control achieved and approved by the constituent agreements. This is due to experience during the years of the Commission, and also significantly increased general society's legal culture on antidiscrimination and equal treatment. These two factors allowed during the reporting period, the legal figure of the agreement to open up more possibilities and advantages given to it by the legislator. It should be noted and the fact that the country has already achieved much more specific and more extensive agreements. Here fore the increased number of proceedings in which the commission has approved them. In that Here fore the increased number of proceedings in which manner it was possible purpose of the law in this aspect can be achieved in much shorter time and with significantly lesser human and financial resources. Reached reconciliation proceedings before the Commission gave the parties an opportunity to achieve significant procedural economy and significantly faster resolution of cases occurred. Control over the observance and implementation of agreements показа, че те в по-голямата си част се изпълняват. During the reporting period, this legal figure has continued to expand its scope and become significantly more common in the practice of CPD compared to previous years. Continued strong agreements with each passing year and talk about significant increases in confidence in the commission of the entities involved in the production.

At the end of the period must once again stress the need for the formation of a separate independent unit at CPD, to perform the full range of legal and factual actions in and in connection with the conduct of enforcement proceedings.

Tendency to increase the number of voluntary performances of decisions of the committee spoke about increased its prestige, but in any case itself is not sufficient to achieve the most effective and timely control. In that manner will increase the practical result of decisions and laid down to strengthen the preventive and educative effect on both the offenders and also on other members of civil society.

## **Administrative capacity**

### **QUALIFICATION, SEMINARS AND WORKSHOPS**

Proper selection and recruitment of staff is not a sufficient precondition for good implementation of administrative tasks. In the dynamic environment of administration, elaboration and implementation of specific programs for training are needed that provide employees with necessary knowledge, skills and attitudes. Training is of key importance for administration, since it is related to increased efficiency of its

main capital – human resources. In that sense, training is part of the administration management, seen as a process of staff development, aimed to improve vocational, organizational and personal performance. Training is important for each employee since it creates environment for career development and growth, brings satisfaction from job and gives motivation.

## **HEALTHY AND SAFE WORKING CONDITIONS**

Healthy and safe working conditions are key social values in the society, guaranteed to workers by the Bulgarian Constitution.

As a secondary effect, it may also protect co-workers, family members, employers, customers, suppliers, nearby communities, and other members of the public who are impacted by the workplace environment. Occupational health aims at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize, the adaptation of work to man and of each person to his or her job.

The ILO definition, tri-partite structure and indicators are followed closely. Modern occupational safety and health legislation usually demands that a risk assessment is carried out prior making an intervention. It should be kept in mind that risk management requires risk to be managed to a level which is as low as is reasonably practical. This assessment identifies the hazards; identifies all affected by the hazard and how; evaluates the risk and identifies and prioritize the required actions. The calculation of risk is based on the likelihood of the harm being realised and the consequences.

In that respect, decision-makers at the Commission for Protection against Discrimination take the necessary technical and organizational measures and create legal guarantees for prevention or compensation for employees.

The CPD provides good conditions for workers' health and safety in the workplace through:

- Monitoring and analysis of working conditions and work environment;
- Elaboration of programs and measures for prevention, decrease and/or elimination of harmful effects of material factors and environment on workers' health and safety;
- Conducting a risk assessment;
- Adjustment of workplaces, equipment and technologies, in order to avoid negative effects on health;
- Adjusting technology processes and equipment;
- Elaboration of policy and strategy for research, control, prevention and actions, ensuring safe and healthy working conditions covering technology, workplaces, working conditions, proceedings and social relations;
- Provision of relevant information in relation with safe and healthy working conditions;
- Identifying and marking existing dangers and sources of harmful factors.

## **INFORMATION SERVICE**

Bulgaria's full-fledged membership in the European Union, the integration of management policies and new Information Communications Technology (ICT) in public bodies require introduction of European standards in each administration providing services. Communication is a key factor for effective cooperation and interaction between an organization and its clients and partners. The transition from a traditional administrative model to provision of integrated administrative services for individuals and business through information technologies was laid in the Strategy on E-Government, adopted by the Council of Ministers with Decision No. 866 of 28 December 2002 Government's objective is a modern and effective management by

the means of ITC, meeting the real needs of individuals and business. The Commission for Protection against Discrimination has situated its offices on two separate floors, functionally linked by a structured cable system. There is Integrated Services Digital Network (ISDN). The access to areas and offices is facilitated by magnet cards that are also legitimating each official. The access control is maintained with special software.

**Regulation on Administrative service under Article 12, Paragraph 4 of the Electronic Governance Act** (*title amended – SG, issue 47 of 2008, in force since 01.06.2008*) in its part on policies for design and interface of information systems poses specific technical requirements and policies for the graphic and other information systems, accessibility of electronic administrative services. **Regulation on the internal turnover of electronic documents and hard-copy documents in administrations under Article 42, Paragraph 1 of the Electronic Governance Act** (*in force since 13.06.2008, adopted with CoM Decree No. 101 of 17.05.2008, promulgated in State Gazette Issue 48 of 23.05. 2008*) stipulates the general provisions for internal turnover of electronic documents and paper documents. Those regulations provide a new process of simultaneous work with paper and electronic documents in all administrative bodies. Following the statutory requirements for compatibility of information systems with the unified electronic environment and pursuant to Article 43, Paragraph 1 of the Electronic Governance Act for operative compatibility, the Commission for Protection against Discrimination has developed its ITC systems, assigning the design, implementation and introduction of external sub-contractors, i.e. outsourcing – a positive step in the liberalization of public services. Outsourcing is a standard behaviour linking administrations and global management.

For the needs of the Commission for Protection against Discrimination, an integrated information system pursuant and observing the Protection from Discrimination Act, was established. It assists victims of experienced or perceived discrimination to lodge complaints, signals or refer to the Commission for Protection against Discrimination. The register system is renewed, meeting the requirements of Rules of Proceeding before the CPD, automatizing the correspondence relations between the Commission for Protection against Discrimination, persons and institutions.

The integrated IT system maintains public register of pronounced decisions of the Commission for Protection against Discrimination and enforced decisions and mandatory instructions. By virtue of Article 47, point 7 of PfDA, the system possesses functional capacity to initiate case files under incoming documents and electronic coverage at each stage, related to proceedings initiated before the CPD. The system has reliable means for protection of information, storage of information and policies for access to electronic storage of cases and registers.

Applied technology follows the CPD intentions to extend its activity, opening decentralized units (regional offices) on the territory of district centres. For that aim, a program product providing access to the system for proceedings, observing the Protection from Discrimination Act through WEB-based technology. At the Commission for Protection against Discrimination, there is an option for temporary and distance workplaces, through reliable wireless technology. The network is crypted and protected.

Many documents under the case files are scanned and attached by FTP server on the relative database. The Commission for Protection against Discrimination website, [www.kzd-nondiscrimination.com](http://www.kzd-nondiscrimination.com), is maintained, up-to-dated and renewed timely with news and actual information.

The website allows complete management of contents for publishing, analysis, design and implementation of the information structure, visual communication and users interface. In Google Page Rank search, the website ranks at third of ten positions. It helps individuals to familiarize with CPD legal framework, to download forms, to lodge complaints on-line, etc. There is accessible forum for exchange of opinions and feedback.

## FINANCES

The Commission for Protection against Discrimination is created as an independent specialized state body pursuant to the Protection from Discrimination Act. CPD is a legal entity on budget funding, situated in Sofia, and is a first-rate dealer of budgetary credits (by virtue of the PaDA, amended SG issue 68/2006, in force since 01.01.2007).

As a first-rate dealer, the Commission is empowered to design its budget for each year, reflecting all changes incurred in the normative regulations and taking into account the forecasts for changes in the macroeconomic environment. Once CPD drafts its budget, the Commission sends it to the Ministry of Finance (responsible for designing the State Budget of the Republic of Bulgaria) to be agreed. Ministry of Finance passes it to the National Assembly (the Parliament) for discussion and voting. The Parliamentary Commission on Human Rights votes CPD budget by headings in the presence of MF and CPD officials. Largest share (46% of all expenses) takes running costs

of the Commission, followed by costs for tangible or intangible capital assets (32%). Pay-roll salaries, remunerations and personnel payments and the respective social contributions amount to 22 % of the total costs.

### **I. Revenues**

Main source of revenues is subsidy of the State budget, according to the State Budget Act for each year. Also, revenues from rents have been collected. The Commission for Protection against Discrimination receives EU funding under various projects and grant agreements.

### **II. Costs**

Under Costs Heading, amount of BGN 2 685 529 or 95.14 % of the yearly budget have been spent.

The budget is constructed in the following manner:

**1. Costs for salaries and remunerations of staff on permanent labour contracts**

**2. Other staff payments (staff not on the pay-roll or under “civil” contracts – e.g. temporary contracts for execution of certain tasks)**

**3. Employers’ security contributions for State Public Security;**

**4. Maintenance**

Costs for: food, medicines, supplies, consumables, water, fuel and electricity; internal services; on-going maintenance; missions in the country; short missions abroad; and insurances.

**5. Capital costs**

Costs for: acquisition of PC and hardware, buildings, other equipment and machines; transport vehicles; construction of infrastructure objects; other tangible capital assets.

Since 01.01.2007, in compliance with the Unified Classification of Positions in Administration, adopted with the CoM Decree №47 dated 1.03.2004, promulgated in State Gazette issue 18 of 5.03.2004, amended issue 11 of 2007, the Commission has been classified in First Rate Administration. Thus, staff salaries are higher than those in second-level administrations. Individual remunerations are determined by a CoM Decree for the ranges of minimum and maximum basic monthly salaries in state administration. CPD annually attests the professional skills and knowledge of its staff and revises their wages according their contributions, promoting them in hierarchy.

## **REGIONAL REPRESENTATIVES**

The establishment of Department „Regional representatives” started in 2008 and continued in 2010 with the appointment of regional representatives in Pazardzhik and Stara Zagora. Thus, their number reached 17. The main focus of their activity is to provide, at the place of residence, persons affected by discrimination with adequate independent assistance and advice on how to protect their right to equal treatment. It was necessary to ensure rapid adoption and processing of complaints and signals, referring the Commission.

### **Functional responsibilities of the Regional representatives of CPD:**

#### **I. Administrative Registry**

Primary responsibility of the Regional representative is accepting and processing complaints and signals of individuals from the region by registering them with order entry number in a single electronic filing system and sending a scanned copy to the CPD head office.

#### **II. Advisory functions and methodological support**

Any citizen can receive adequate advice from Regional representative in the region regarding: requirements for eligibility and regularity of complaints and signals in willingness to receive legal protection against CPD,

Rules of Proceedings at the Commission and its powers; information for the development of the proceedings initiated.

Within these functions the Regional representatives of CPD served 3,081 individuals, of which 2291 have been consulted and methodological assistance in connection with specific complaints, while 790 have received information about the limits of the protection of PaDA and CPD powers.

### **III. Expert functions**

The Regional representatives assist rapporteurs in the investigation and establishment of objective facts set forth in the complaints before the Commission, by collecting witness statements, written explanations of the parties, check of accessibility to the built urban environment, a search party to case files and other procedural actions assigned to them subject to their given clear written instructions to the relevant rapporteur on case file.

### **Monitoring functions**

The follow-up monitoring on the implementation of regulations set by the Commission is supported by the Regional representatives. Subsequent imputed control function of the Regional representatives on the implementation of CPD acts of CPD optimizes the administrative capacity, on one hand, and its efficiency in carrying out the rulings, on the other hand.

### **Organizational support functions**

The Regional representatives are involved in organizing the planned events and open forums of CPD in relevant areas, publicize and inform all stakeholders from public, private and NGO sector directly related to the fundamental principle of general prohibition of discrimination. On the other hand is regulated on the legislative organs of government, public bodies and local authorities the duty to take priority measures to equalize opportunities for persons who are victims of discrimination.

The Commission has a functioning network of Regional Representatives in 17 district cities and municipalities (e.g. Burgas, Dobrich, Gabrovo, Lovech, Montana, Plovdiv, Razgrad, Sliven, Smolyan, Silistra, Veliko Tarnovo, Vidin). Those offices are also equipped and provided with own premises, accessible for persons with disabilities.

At Present, CPD has 17 Regional Representatives in the towns of Blagoevgrad, Burgas, Dobrich, Varna, Plovdiv, Veliko Tarnovo, Gabrovo, Lovech, Montana, Vratsa, Shoumen, Silistra, Smolyan, Razgrad, Vidin, Stara Zagora, Pazardjik. The regional offices have their own premises, ITC and office equipment and provide independent advice and assistance in case-filing to citizens in the respective districts. The CPD has very good cooperation with the municipalities in Bulgaria (264 municipalities). We have a network of contact points there.

# **CPD PARTICIPATION IN EUROPEAN PROJECTS INTERNATIONAL COOPERATION, INTERACTION WITH PUBLIC AUTHORITIES, NGO and MEDIA**

## **EU Projects**

In 2010 the Commission for Protection against Discrimination designed and implemented four international projects with such outstanding partners as the Danish Institute for Human Rights, the Portuguese Commission on Citizenship and Gender Equality and the Dutch Equal Treatment Commission. Matra-Flex project: As a point of departure, the Bulgarian Commission for Protection against Discrimination sought a Peer equality body with longer and wider experience, skills and knowledge. The main areas of interest were the tackling of cases (practical aspects as investigating complains for discrimination in the workplace, (un)equal pay cases, cases of discrimination on the grounds of age, disability and race, etc. In that regards, the CPD appreciates as very valuable the approach and knowledge of the CGB: Dutch experts chose classical cases from their case-law and provided their Bulgarian colleagues with all relevant materials, evidences, expert statements (translated in Bulgarian), letting them solve the case as if it was lodged with the Bulgarian Commission, That approach turned to be very productive since it gave floor for peer exchange and review, since as we stated in the proposal, Bulgarian legal advisors at CPD had very limited chances to learn in direct interaction with colleagues from other equality bodies. A Study visit in CGB, Utrecht (8-12 Feb 2010): from Bulgarian side, we feel obliged to thank to our Dutch colleagues first for managing to “accommodate” a large delegation of 15 members in their physical space and workload since as a sister organization we are fully aware of the case-load and the urgency of daily tasks; from professional pint of view, the visit and agenda were perfectly organized and balanced, involving Bulgarian experts in practical workshops, discussions and sharing of tools (benchmarking, case-solving, “equality-checks, measurements and scans”, system for monitoring of equal pay in companies, attending a public hearing – unlawful discrimination on the workplace on the ground of illness/disability etc.). Results: A Benchmarking procedure which can be easily transferred to any other pair or more EU equality bodies. Two “readers” have been prepared for each study visit – collection of relevant cases, presentations, legal texts and documents, translated in Bulgarian/English/Dutch that can be used after the project completion as reference. Copies of them are filed at CPD library. In March, two trainings for the whole staff of CPD took place: one on mediation, the other to familiarize those who did not attend the study visit in the Netherlands with the lessons learnt (a Report was prepared with comparison between the approaches and procedures of the two equality bodies).

Discrimination Free Schools was Implemented together with the Danish Institute for Human Rights, providing valuable educational package including DVD film, the website Discrimination Free Schools and training manuals. The education package has impact on the focal target groups in terms of providing them with concrete educational tools on how issues as discrimination, racism, xenophobia and religious intolerance can be addressed in elementary and secondary school contexts. Moreover, the training manuals, developed for each group, provide them with concrete guidelines on how the package is applicable in their respective educational routines. The website makes the package and its additional information easy to access for the target groups.

During the project, trainings for relevant target groups were held.

In 2010 CPD implemented the E-Tolerance Test project with the financial support of the EU Youth in Action Programme. It was in cooperation with Consorcio Intermunicipal del Pacto Territorial por el Empleo del Valle del Vinalopó Spain, the Commission for Citizenship and Gender Equality Portugal and the Dutch partner Education for Peace Projects.

The project **Progress to Equality: National Effective and Innovative Practices to Combat and Prevent Discrimination** in partnership with the Ministry of Labour and Social Policy of the Republic of Bulgaria was implemented with the financial support of Progress programme. The project intertwined two priority themes - **Positive Measures** (identification of existing practices, research work on their impact and awareness-raising on their results, building on the results of a recent European Commission's study on the promotion of diversity in the media and national efforts in that respect) and in-depth research and analysis of the **Multiple discrimination** phenomenon, awareness-raising of its existence and consequences, identification and dissemination of good practices in combating multiple discrimination in various fields (employment, judiciary, education, access to goods and services, etc.). Both EU and Bulgarian antidiscrimination law provide for specific measures to counter disadvantages resulting from illegal discrimination. But **information on the implementation of positive measures is hard to find**, since there is hardly any public discussion or any platform for discussion. Public, private and non-profit bodies are implementing measures, but they are **not explicitly labelled** as "positive measures", are **not publicised or need to be based more on shared experiences** if they are to be developed further as part of a meaningful strategy. The activities of CPD included 12 National Legal workshops for judges, magistrates and legal practitioners; 1 workshop for police officers, investigators and prosecutors; 1 workshop for experts from the Regional Inspectorates on Education (the 32 regional units of the Ministry of Education, Youth and Science); 1 workshop for media experts and journalists.

In 2009-2011, CPD is implementing a joint project with the Danish Institute on Human Rights ("Discrimination Free Schools"), producing a training package on human rights and tolerance, combating racism, xenophobia and discrimination.

**Annual National Legal workshops for judges, magistrates and legal practitioners: "Civil and Legal Aspects of the Protection against Discrimination", 28-30 October 2010, Varna**

Significant part of the workshop was dedicated to a Moot court on discrimination cases, which is done for the first time in Bulgaria. Participants will be divided in six groups and will have to tackle cases from the practice of the CPD. Among key EU speakers are Mr. Niraj Nathwany from the European Union Agency for Fundamental Rights who present evidence about the situation of fundamental rights across the EU, access to justice and situation of disadvantaged groups; Mr. Victor Soloveytchik from the European Court on Human Rights who will present relevant case-law and Mr. Jean-Philippe Christienne from the Court in Luxemburg who will present the subject "From Mangold to Rosenblad: the build-up of the ECJ age discrimination case-law".

**National Legal Workshop "Combating and preventing discrimination by the means of criminal law," 8-10 April 2010, Sofia)**

The workshop focused on combating certain forms and expressions of racism, xenophobia and hate-crimes by means of criminal law. Bulgarian Judiciary has limited experience and case law on xenophobic, homophobic and discrimination cases. The insights of ECHR, ECJ and other international courts' case-law are immensely valuable. Furthermore, by virtue of Racial Equality Directive 2000/43/EC, 2000/78/EC and the Protection against Discrimination Act the promotion of equal treatment principle in society is a mission for the Commission for Protection against Discrimination. We ensure that the lectures, discussions and workshops address the Bulgarian context at the background of fight against hate crimes and will foster a dialogue on necessary legislation amendment to transpose properly the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

## International cooperation

International cooperation is among the priorities of CPD in order to exchange experiences and good practices, mutual learning and development of transnational approaches to the prevention and combating discrimination.

The most important step of CPD in 2010 towards establishing international plan was in the filing of an application for accreditation as a national authority on human rights before the International Coordinating Committee and the Subcommittee on accreditation to the UN High Commissioner for human rights. The Accreditation Subcommittee to the International Coordinating Committee of national bodies for the promotion and protection human rights has a mandate to examine and analyze applications for accreditation of the relevant national authorities and make recommendations to the members of the IRP for compliance of applicants with the Paris Principles. The application of the CPD will be submitted for discussion at the forthcoming session of the Subcommittee on Accreditation in May 2011.

### Cooperation with public institutions Partnership with NGOs

Since its establishment, the Commission for Protection against Discrimination has good cooperation and partnerships with public institutions and public organizations active in the field of anti-discrimination. The Commission for Protection from Discrimination has build-up lasting partner's contacts with institutions and organizations, working on problems of equal treatment and discrimination.

Out of the authorities, vested in public power and management, we can mention some are standing out; with them, we realize active collaboration: the Commission of Human Rights and Religions at the National Assembly, the National Council on Ethnic and Demographic Issues at the Council of Ministers, the Ministry of Labour and Social Policy, the Ministry of Foreign Affairs, the Ministry of Interior and in particular the Metropolitan Directorate and the Road Traffic Control, the Agency for People with disabilities, as well as the trade union organizations "Confederation of Independent Trade Unions in Bulgaria" and "Podkrepa".

Together with the Commission of Human Rights and Religions at the National Assembly, CPD held a seminar where with the obvious interest of both parties, cultural and religious aspects of tolerance have been discussed, the compliance of Bulgarian legislation with the European Convention on Human Rights, the UNO Convention on Human Rights, etc. We should specially mention the collaboration between the Commission and the Ministry of Interior. The activity of employees of the Ministry of Interior in popularization of antidiscrimination, the specific activity related to handing summons to parties in sessions, is an example of good joint activity. Together with the Ministry of Foreign Affairs, the Commission is actively involved in the preparation and conduction of measures, concerning international legal aspects of discrimination.

In all cases of preparation or concordance of normative documents, both instates acted in very good coordination and collaboration. We should explicitly underline the good work and the interaction between the Commission for Protection from Discrimination and the managements of regions and municipalities. On any issue we addressed them – either problems of the Commission or joint measures – they reacted with competence, understanding and active participation.

Representatives of the judiciary - judges, public prosecutors and investigators have actively participated in all seminars and round tables, organized by the Commission and contributed in the joint discussion of the problems in applying the antidiscrimination legislation. The Commission holds annual seminars for judges and legal practitioners on various topics.

The Commission has traditionally good collaboration with the National Ombudsman. Representatives of the Commission take part in forums, organized by the Ombudsman and vice versa. The common objectives addressed by the partners, are popularization of Bulgarian and European legislation

concerning equal treatment; organization of trainings and seminars; joint actions to initiate draft laws or amendments to already effective normative acts in the field of equal treatment and carrying out of the surveys and analyses in the field of Bulgarian and European legislation concerning equal treatment; joint initiatives to approach the competent authorities concerning committed violations. The partnership between the Commission and the public institutions, working on the issues of discrimination, is on a very good level. The expansion of partnership and collaboration in the next year should be also addressed to the municipalities and small towns.

By virtue of PaDA Article 47, item 12, CPD exercises also other powers, as envisioned in the Rules of Organization and Operation, Article 7, namely interaction with public bodies and NGO.

The Commission for Protection from Discrimination has established lasting collaboration with a large number of nongovernmental organizations in the realization of its activity: Union of the Blind in Bulgaria, Union of the Deaf in Bulgaria, Union of Handicapped Persons in Bulgaria, Foundation of Parents of Children Suffering from Epilepsy, Bulgarian Association of Persons with Intellectual Difficulties, Bulgarian Helsinki Committee, Bulgarian Center for Not-for-Profit Law, Lawyers for Human Rights., SEGA Foundation, Interethnic Initiative for Human Rights Foundation, Queer Bulgaria Foundation, Health Protection Confederation, the Bulgarian Helsinki Committee, UNDP, the organizations "Gender project", "Zhar", Open Society Institute, "Romani Baht, Center for Psychological The surveys, International Center for Minorities and Cultural Relations", the Human Rights Project, Bulgarian Gay Organization GEMINI, the European Institute, etc.

Generally, the CPD develops partnership with nongovernmental organizations in implementing its preventive activity pursuant to Article 40 PfDA. Within the framework of continuing explanatory campaign, the CPD establishes contacts with the regional structures of most nationally represented nongovernmental organizations, both of and for people with disabilities, and organizations of various ethnicities and similar.

The Commission is actively involved in measures organized by nongovernmental organizations. In all cases, where we have been invited, we have sent our representatives to such events. For example, with the National Police Trade Union, we made together 5 training seminars. Jointly with Center for Not-for-Profit Law we realized 2 trainings of representatives both of nongovernmental organizations, and of business circles. During all events of nongovernmental organizations, advertising materials of the Commission have been distributed. The partnership with nongovernmental organizations contributes exclusively for the Commission to lead a wide campaign among society to combat discrimination. On the other hand, such organizations are a type of corrective for the State to fulfill its obligation and provide equal treatment for its citizens, through its authorities: Commission for Protection from Discrimination, National Council on Ethnic and Demographic Issues at the Council of Ministers and the Ministry of Labour and Social Policy,

The CPD has effective partnerships with NGO while implementing its preventive activity and while executing its controlling functions on its decisions.

The partnership with non-governmental organizations contributes for the far-reaching info campaign of the Commission for Protection against Discrimination in civil society for combating discrimination. On the other hand, those organizations act as a corrective for State, observing for the provision of equal treatment of individuals.

### **Media Workshop "National Effective & Innovative Practices to Combat Discrimination in Media" 25-27 February 2010, Velingrad**

**Participants:** editors, reporters and journalists from over 50 national and regional media such as Bulgarian Telegraph Agency, Bulgarian National Television, Bulgarian National Radio – Hristo Botev Program, Darik Radio, daily newspapers "Dneven Trud", "24 chasa", "Sega", "Monitor", "Telegraph", "Novinar", "Duma", regional newspapers; **DEUTSCHE WELLE**, Econ.bg, Sofia News Agency and others; the Association of Bulgarian Broadcasters, Commission for Ethics in Press, Advertising **AGENCIES ASSOCIATION**, Bulgarian Regional Media Association, Journalism and Mass Communications Faculty to the State University of Sofia. The Council on Electronic Media and the National Council for Journalistic Ethics have been actively involved.

**Speakers and topics:** Mira Radeva, Ph.D., President of MBMD Research Institute - *Stereotypes and Prejudices at School Education, grounds gender, disability, ethnicity and religion*, Prof. Hristo Kaftandjiev, Journalism Faculty, State University of Sofia - *Preventing Discrimination in Advertising and Marketing Communications – national and international expertise*; Georgi Lozanov, Ph.D. - *Reality and Human Rights*, Ass. Prof. Blagoy Vidin - *The Role of CPD in society: statistics and rulings leading to sustainable policies*, Desislava Petrova, Bulgarian Helsinki Committee - *European Standards on Freedom of Expression. Media and Combating Discrimination*; Rumyan Petrov, Electronic Media Council - *Electronic Media Council's Activities for preventing and combating discrimination in media*. **Hand-outs: Diversity Toolkit for Media.**  
**Results:** constructive debate on hate-speech, ethics, self-regulation and non-discrimination in media and fostering of good practices.

## CONCLUSION

It was another year in which the Commission for Protection against Discrimination consistently, strongly and effectively implements its mission and functions as a national equality body.

The CPD is building its prestige in Bulgaria and in Europe where it shares and borrows practices and experiences. By virtue of its powers and capabilities, it makes efforts to achieve more noble and colorful world where tolerance is a virtue and harmony in diversity. Where everyone is different in his or her own dignity. Because it is our differences that makes us unique.

And if someone, whoever, wherever, irrespective of how its actions makes us feel humiliated and ignored because they are different, and violates our cherished fundamentals right to uniqueness, he tramples on the laws of nature and society, therefore has to bear his guilt and suffer consequences.

### **Priorities of the CPD in 2011 can be divided into several directions:**

1. Active involvement in completing the procedure for accreditation of CPD at the UN as a national authority on human rights.

At the end of 2010 Commission for Protection against Discrimination (CPD) made a decision and submit an application to the United Nations accreditation as a national authority on human rights.

2. Amending and supplementing the Protection against Discrimination Act, aimed at improving current practice in accordance with provisions of the Commission and the Bulgarian and European jurisprudence. Amendments and additions should be directed to:

- A need to provide CPD right to refer to Constitutional Court. There are many cases where the Commission finds that the provisions of law contrary to the prohibition under Article 4 Para 1 PaDA., while there is a contradiction and Article 6, Para 2 of the Constitution or international treaties prohibiting discrimination. According to the existing PaDA, the Commission gives non-binding recommendations to change the relevant law, failure of which is not subject to sanction, therefore discriminatory provisions of law continue to operate in domestic law. Given the institutional independence of the CPD is necessary to enable it to refer the Constitutional Court in

- the cases of Article 149, Para 1, item 2 and item 4 before. second of the Constitution to establish conflict of law with the provision of Article 6, Para 2 of the Constitution or other international law prohibiting discrimination.
- Improved application of Article 9 of the Protection against Discrimination Act, setting forth the shift of burden of proof, in discrimination cases. The current regulation requires from the victim to produce facts and circumstances clearly showing that he/she was discriminated. Now, Courts often require the victim to prove in a convincing and undoubted way all elements of discrimination, including intentional and deliberate unequal treatment. (Also, domestic courts require from the victim to prove causal link between the less favourable treatment and the respective protected ground; in other words, that only the respective protected ground (ethnicity, race, gender or age) is a ground for discrimination. Interpreted and applied in that manner, the rule on shifted burden of proof does not meet the prove standards of Directive 2000/78 and Directive 2000/43, where burden of proof shifts back to the respondent when evidence and facts are produced that lead or suggest discrimination, even if those facts and evidence do not impose the irrevocable conclusion for committed discrimination.
  - Introduce a procedure for anticipatory enforcement measures while the complaint is being considered by the CPD. Also, introducing a procedure for ruling a decision of CPD even if one of the Parties does not attend hearings - when that party has passive or uninterested procedural behavior.
  - Amendment to the Protection against Discrimination Act to introduce a property sanction for public entities, merchants, collective bodies and legal entities for discrimination committed in their activities.
  - *Inclusion of provisions imposing positive duties on policy makers, employers and service providers. Positive duties have been imposed on designated public sector organisations to have due regard to equality in carrying out their functions. More specific duties have been imposed on employers in the public and private sectors to be proactive in promoting equality through developing equality plans, implementing diversity policies or conducting wage surveys. Positive duties have also been imposed on local authorities to plan for equality.*
  - Regular and periodic monitoring and impact assessment of the National employment strategy, programs, plans and other initiatives aimed at providing equal opportunities and preventing discrimination. The involvement of the national equality body in the design and assessment of those programs is a wise idea.
  - In order to improve the effectiveness of a specialized body in implementing the national anti-discrimination law, it good to have a separate administrative unit in charge with monitoring, studies and trainings;
  - It is necessary to design and implement a specialized legal assistance program for the victims of discrimination with the involvement of relevant NGOs and trade unions.
  - Constant efforts to raise qualification and skills of the staff to recognize and prevent *racial discrimination*.
  - Promoting mediation as an alternative means of dispute resolution.
  - Opening of regional offices in the remaining district cities.
  - Participation in international projects as a means of improving the qualifications of employees and to strengthen the authority of the Commission.
  - Active international cooperation and establish lasting relationships with similar specialized bodies.
  - Enhanced control over the implementation acts of the Commission.

**In 2010 the Commission for Protection against Discrimination was presented with very good reviews in the study of the European Commission for equality bodies set up by virtue of Directives 2000/43/EC, 2004/113/EC and 2006/54/EC. It is listed as an example of good practice in several respects:**

An “integrated” body that works on 19 indicators of discrimination. The research team mentioned cases of multiple discrimination on protected grounds of sex and age and as a good example indicating the presence of the trait personal situation, which allows a broad interpretation.

The power of the CPD to conduct an independent study of the submitted complaints and act as a quasi-judicial authority. Bulgaria has been cited as examples of countries where the national equality body has contributed to the development of public culture of respect for human rights. Commission for Protection against Discrimination has been able to raise awareness of the general public about discrimination as a violation of the law and antidiscrimination as a way to raise awareness of the general public about discrimination as a violation of the law and antidiscrimination as a way to respect fundamental rights.

The presence of 15 regional representatives of the CPD (at the time of the survey) is highlighted as one of the most valuable achievements in the work of the commission.

Cites several recommendations of the CPD, led to a change in above-mentioned regulations with discriminatory. The willingness of state institutions to heed Commission for Protection against Discrimination also noted as a positive indicator for the development of societal ethics and culture.