

# BULGARIA

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## 1. National court system

The new Civil Procedure Code 2008 (CPC) provides that four types of courts are competent to hear civil cases - the District, the Regional, the Appellate and the Supreme Court of Cassation (SCC). The Regional court acts as a second instance to the District Court while Appellate Courts are the second instance on cases where the Regional court acted as first instance. The third and last instance is the Supreme Cassation Court (SCC) irrespective of the first instance court. The Regional and the District Courts act as first instances. The allocation of the cases between the two courts can depend on the amount of the claim, the type of the case and the field of civil law it concerns or the particular type of proceedings. The Regional court which is regarded as superior to the District considers as first instance more complex civil and commercial law cases with higher amounts of the claims, certain family law cases like claims for guardianship, termination of adoption, determination of parentage as well as cases regarding the validity of registration of legal entities. All other civil cases fall within the

cognizance of the District court including claims under the Protection Against Discrimination Act (PADA)<sup>1</sup> irrespective of the amount of the claim.

#### Proceedings before the first instance

The procedure starts by filing an application. The new CCP introduced the obligation of the court to send to the defendant, along with the copy of the claim, written information regarding his/her procedural options to react to the motion against him/her and to explain the consequences of not doing so.<sup>2</sup> The defendant has one month to prepare his/her reply and to present evidence. If the defendant fails to do so he/she will be unable to make these actions at later stages of the proceedings.

#### Proceedings before the second instance

An appeal against a first instance decision is to be filed within a two-week period starting from the date of receiving of the appealed decision by the parties. The period stops to run if an application for legal aid is filed. The procedure for exchange of counter appeals and/or objections is identical to the one before the first instance. The new CPC restrains the parties of presenting new evidence which they were or should be aware of during the proceedings before the first instance. Only new and previously unknown circumstances or evidence can be presented and considered by the appellate court. The second instance examines *ex officio* the validity of the appealed decision while admissibility issues and other objections are considered only if raised in the appeal.

#### Proceedings before the third (cassation) instance

The new CPC (2008) adopted generally new requirements for the parties to comply with in order to be able to approach the Supreme Court of Cassation (SCC). The repealed CPC (1952) required that a second instance decision can be appealed before the SCC if it is invalid, inadmissible or is incorrect due to a violation of the material law, a substantive breach of procedural rules or because the decision is ill-reasoned. The new CPC kept the above mentioned provisions but adopted in addition separate requirements on the admissibility of the

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<sup>1</sup> The PADA is the main Bulgarian anti-discrimination legislation, which transposes the Racial Equality Directive. It is a single equality law universally banning discrimination on a range of grounds (including race and ethnic origin), and providing uniform standards of protection and remedies. Bulgaria/ *Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), available in English at: [http://www.kzd-nondiscrimination.com/index.php?option=com\\_content&task=view&id=15&Itemid=30](http://www.kzd-nondiscrimination.com/index.php?option=com_content&task=view&id=15&Itemid=30), (last accessed on 10.03.2009).

<sup>2</sup> The letter of the court must also contain: 1. information about the possibility to use legal aid if entitled; 2. information about the option of filing an objection or a counter claim and if doing so about the obligation to send or/and to point out all relevant evidence available to the defendant; 3. clarification of the consequences of omitting to respond to the claim or to present evidence.

cassation appeal. The court of appeal should have held on a material or procedural law issue which: is addressed in conflict with the case-law of the SCC, or has been addressed by the courts in a conflicting manner, or is relevant for the accurate application of the law or for the progress of law. The above mentioned modification has been made in order to reduce the amount of cases reaching the SCC. If the cassation appeal is declared admissible and after it has been examined on its merits, the SCC can quash, uphold or modify the appealed decision.

#### Proceeding under the Protection Against Discrimination Act

The Protection Against Discrimination Act (PADA)<sup>3</sup> provides two possible options for a person that has been discriminated to seek redress. The first step is filing a complaint before the Protection Against Discrimination Commission (PADC) which is an independent equality body with quasi-judicial functions. It can establish discrimination and impose fines but cannot award damages. The Commission's decisions can be appealed before two instances of the Supreme Administrative Court- the three- and the five-panel one. The second option is filing a claim before the local District Court which can award damages. Its decision can be appealed respectively before the Regional and the Supreme Court of Cassation. The proceedings both before the civil courts and the PADC are free of administrative or judicial fees and charges for the applicants.

Cassation appealability shall not apply to any judgments in cases with an appealable interest not exceeding 500 Euro.

Table 1: Court instances and the right to appeal in civil proceedings

<b>First Instance</b>	<b>Second instance</b>	<b>Cassation instance</b>
Regional Courts (excluding the cases which are under the jurisdiction of the District Courts)	District Courts	Supreme Court of Cassation

<sup>3</sup> Bulgaria/Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), available in English at: [http://www.kzd-nondiscrimination.com/index.php?option=com\\_content&task=view&id=15&Itemid=30](http://www.kzd-nondiscrimination.com/index.php?option=com_content&task=view&id=15&Itemid=30), (last accessed on 06.09.2009).

According to national law judges are appointed by the Supreme Judicial Council and after five years of experience and successful pass of the assessment procedure they cannot be dismissed. Individuals can challenge and request the removal of judges where they have reason to believe they are not impartial regarding certain case.

## 2. Restrictions regarding access to justice

### Time limits

The first restriction is the time within which the complaints or applications can be submitted to the courts. Individual and general administrative acts might be appealed within fourteen days after their communication. A tacit refusal or a tacit consent might be appealed within one month after the expiry of the time limit within which the administrative body was obliged to pronounce. No time limitation exists for motions to declare administrative acts null and for appeal of secondary legislative acts. The civil substantial rights vary in terms of their prescription period – under the Закон за задълженията и договорите [Contracts and Obligations Act] most of the contractual rights have prescription period of five years and in rare cases – three years. Most of the civil procedural rights are limited by preclusive periods (which terminate the right to exercise the procedural right).

### Parties

Parties to civil cases are the persons who sue and who are sued. Apart from cases provided for by law, no one may claim another's rights on one's own behalf before a court. A person is capable of having procedural rights and duties if he/she is of full capacity to have rights and duties under the substantive law. Individuals and organizations whose rights, freedoms or legitimate interests are violated or jeopardized by the act or in respect of whom the act gives rise to obligations have a right to appeal an administrative act. An administrative act may be appealed before the court even if the possibility for administrative appeal act has not been exhausted, unless otherwise provided in law.

### Formality of the application/claim

Another restriction in the procedural law is the form and the obligatory content of the applications. An application in civil and administrative cases is to be lodged in writing and

must state: specification of the court; the names and other coordinates of the applicant; the full name and address of the respondent, the essence of the violation, subject of the dispute, signature of the person who lodges the application. In the application the applicant is obliged to specify the evidence which he/she wants to be collected and to present the written evidence that he/she possesses.

### Fees

In civil cases a state fee is to be paid by the applicant for the proceedings to be opened and in most of the cases it is the equivalent of four percent of the claimed compensation. Cases whose subject is protection from discrimination are exempt of this fee but the courts widely violate the law by obliging the applicant to transfer the fee.

## 3. Length of judicial proceedings

The reviewed antidiscrimination cases took on average four to five years to reach the cassation instance and to have final decisions. At each instance court the proceedings take usually one to one and a half year.

The research of 43 antidiscrimination court cases showed that a three instance case takes on the average at least 30 months to finish and at least five more months for the compensation to be paid. The length of the proceedings before the first instance courts varies between four and 41 months – out of 43 cases ten lasted four-five months, 14 cases - from six to 19 months, eight cases – 19 to 20 months before the first instance courts. Before the second instance the cases last between five and 28 months – 17 cases lasted five to seven months, 15 cases – seven to 20 months and one – 28 months. Before the Supreme Court of Cassation 12 cases lasted 10 to 20 months, two cases – 25 months, one – 34 months and one – 36 months. The shortest case proceedings lasted 21 months before two instances. The total length of the proceedings of the antidiscrimination cases before three court instances is always over 25 months, varying in six cases from 25 to 35 months, in nine cases - from 35 to 45 months and in six cases – over 45 months. When the cases finish right after the second instance (which is the situation with eight of the reviewed cases) their total length is from ten to 47 months in total, the average being around 25 months. It must be added that it was very hard to find out whether some of the reviewed cases had finished as the parties were not notified about any appeal at the time of the research but the reason for that might be that the Supreme Courts are late to notify them. None of the antidiscrimination cases was closed after the first instance court decision.

The procedures before the equality body are much speedier – investigation of the facts takes 30 days and the delivery of the decision should be done within 14 days. The cases before the equality body last 8 to 12 months and if the decisions were appealed - from 9 to 19 months (in addition) if the Supreme Administrative Court acted as a second and third instance by its three- and five-judges panels.

## 4. Are procedures concluded within a reasonable time?

The procedures in anti-discrimination civil cases last over the reasonable time. Broadly speaking there are excessive delays. Out of 19 cases in which the three instance stages were applied in 14 cases the proceedings lasted over 36 months, one lasted 61 months. Below 36 months are the proceedings that passed only one stage of an appeal.

The review of the cases shows that some of the basic reasons for the delay is improper or late (within less than seven days before the first hearing) notification of the parties, other cases for the lawyers, scheduled at the same time, improper appointment of experts, issuing of the judgment late after the last hearing (varying from one to five months, especially at the first and second instance courts). Another reason for the long proceedings is lack of notification of any of the parties about the moves on the case when the last decision was appealed. The big city Regional courts and the Supreme Cassation Court expect the parties to check regularly what were the last moves on the case (while none of them update adequately their websites this is done by physically checking in the court building) thus jeopardising the right to access to justice of the parties as the deadlines for a reply to the appeal, written statements of the lawyers or presence at a hearing are restricted.

## 5. Does provision exist for speedy resolution of particular cases?

Chapter 23 of the Civil Procedure Code (Art. 310-316) determines the types of disputes and the procedural rules for their expedited proceedings by the civil courts. Antidiscrimination disputes are not included in it. One tool that might be used in antidiscrimination proceedings is the petition to set time limit in case of unreasonable delay.<sup>4</sup> Another tool for speeding up the

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<sup>4</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art. 255-257. Where the court fails to perform a particular procedural step in due time, the party may, during any stage of the

procedure is the admission to anticipatory enforcement. The court allows anticipatory enforcement of the judgment in case it awards maintenance, remuneration and compensation for work.<sup>5</sup> The court, acting on a motion by the plaintiff, may furthermore admit the judgment to anticipatory enforcement where: the court awards a receivable based on an official document; the court awards a receivable which has been admitted by the respondent; the delay of enforcement may result in material and irreparable damages to the plaintiff or the enforcement itself would become impossible or be considerably impeded. In the latter cases the court may order the plaintiff to furnish due security in advance. In three of the reviewed court cases anticipatory enforcement was implemented.

## 6. Is it possible to waive the right of access to a judicial body?

It is possible to waive the right of access to a judicial body. This is the case with applications submitted by physical persons who are under guardianship who do not have procedural capacity to access the courts by themselves.<sup>6</sup> Under the Civil Procedure Code minors and adults under plenary guardianship are represented in civil proceedings by their legal representatives: parents or guardians.

## 7. Access to non-judicial procedures

The Protection Against Discrimination Act (PADA)<sup>7</sup> provides a possibility for for a person to seek redress before the Protection Against Discrimination Commission (PADC). The PADC is an independent equality body with quasi-judicial functions. It can establish discrimination and impose fines but cannot award damages. The Commission's decisions can be appealed before

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proceeding, submit a petition to set an appropriate time limit for performance of the step. The petition is submitted before the same court to the superior court. The court which examines the case shall transmit the petition together with the observations to the superior court. Where the court performs all steps stated in the petition and sends the party a communication regarding this performance, the petition is presumed withdrawn. The petition will be transmitted for examination to the superior court if the party declares within one week after receipt of the communication that it continues to maintain the petition. A petition to set a time limit is examined by a judge of the superior court within one week after its receipt. If the court finds an unreasonable delay, it sets a time limit for performance of the step. Otherwise, the court denies the petition. The ruling is not subject to appeal. In none of the reviewed cases such a complaint was filed.

<sup>5</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art. 242.

<sup>6</sup> Mental Disability Advocacy Center, *Guardianship and Human Rights in Bulgaria*, 2007, Budapest, available in English at: [http://www.mdac.info/documents/Bulgaria%20report\\_comprehensive\\_English.pdf](http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf) (last accessed 06.09.2009).

<sup>7</sup> Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), available in English at: [http://www.kzd-nondiscrimination.com/index.php?option=com\\_content&task=view&id=15&Itemid=30](http://www.kzd-nondiscrimination.com/index.php?option=com_content&task=view&id=15&Itemid=30), (last accessed on 06.09.2009).

two instances of the Supreme Administrative Court- the three- and the five-panel one. The proceedings before the PADC are free of administrative or judicial fees and charges for the applicants. It is not obligatory to proceed to an equality body before the court.

The equality body can make a finding of discrimination, and order preventive or remedial action. It can also impose financial sanctions.<sup>8</sup> However, as mentioned above, it can award no compensation to a victim. Thus, if the victim seeks compensation she/he needs to initiate a case before the courts in addition to the case before the equality body or without passing the procedure before the equality body. Both the judicial and the specialised quasi-judicial remedy are legally binding. The only limitation is the rule on prescription. For the judicial remedy, the prescription period is five years, and for the equality body, three years.<sup>9</sup> Both procedures are universally applicable to both the public and private sectors.

The PADC's powers also include: receiving and investigating complaints by victims, as well as third parties without limitation; issuing binding instructions to prevent, stop or require abstention from discrimination and/or restore the status quo ante; carrying out surveys and publishing independent reports; bringing court action and joining court proceedings in an *amicus curiae* capacity; making recommendations to other authorities to reform legislation or practice; giving opinions on draft legislation; and providing independent assistance to victims of discrimination.<sup>10</sup> The PADC has quasi-investigative powers, including accessing any testimony,<sup>11</sup> documents<sup>12</sup> or facilities for on-site inspections<sup>13</sup>, which allow it to be proactive in gathering evidence, thus relieving the victim.

Under the Protection Against Discrimination Act, the PADC has powers to impose financial sanctions between the equivalents of 125 and 1250 Euro.<sup>14</sup> These sanctions are administrative fines and are not awarded to the victim as compensation but go to the state budget. Where a

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<sup>8</sup> The maximum amount of sanction imposable on an individual for an act of discrimination is the equivalent of EURO 1000. For legal persons this is EURO 1250. For a repeated offence, the sanction is automatically double. For a failure to abide by a decision of the equality body, the maximum sanction is EURO 5000. Where such a failure continues for more than three months after the decision imposing this sanction entered into force, the next sanction is up to EURO 10 000.

<sup>9</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 52, para.1.

<sup>10</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 47.

<sup>11</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 55.

<sup>12</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 56, para.1.

<sup>13</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 56, para.2.

<sup>14</sup> Bulgaria/ Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 78-80.

violation is repeated, the sanction is double.<sup>15</sup> Those sanctions are uniformly applicable to all sectors and fields, including the private and public ones, as well as fields outside employment. The equality body can, furthermore, order particular remedial action by discriminators, and suspend the execution of employers' decisions where those may result in discrimination.<sup>16</sup> The PADC provided information that it issued seven decisions on the ground of ethnic discrimination in 2006 (the sanctions being four fines, two agreements, three obligatory instructions); seven decisions in 2007 (the sanctions being three fines, one recommendation, four obligatory instructions) and nine decisions in 2008 with sanctions six obligatory instructions, three fines, two agreements.<sup>17</sup> It is unclear to what extent monetary and other sanctions imposed by the equality body are complied with. While the amounts themselves under the law are capable of deterrence, this may be compromised by ineffective forced implementation.

The role of mediation is not explicitly provided for in antidiscrimination legislation in Bulgaria in discrimination cases on the grounds of ethnic and race origin. The research did not find evidence that Mediation Act (adopted in 2004) has been applied to discrimination cases yet. The PADC mentioned in its 2007 annual report that in eight cases before it the parties reached an agreement that the PADC facilitated and approved. It recognised its participation in reconciliation proceedings as a mediator's role. It stated that 'good will and good manners are the preferred result of a proceeding before the Commission because the path of persuasion, education and cultivation of such morals in society will be most powerful guarantee for imposing the democratic principle of equal treatment.'<sup>18</sup>

## 8. Legal aid

The legal assistance and representation of victims of discrimination is not institutionalized.

According to Legal Aid Act and Civil Procedure Code, applicants are entitled to legal aid for their representation in civil cases, which would include discrimination cases. In principle the

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<sup>15</sup> Bulgaria/ *Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art. 81.

<sup>16</sup> Bulgaria/ *Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art. 76.

<sup>17</sup> Written reply of the PADC, dated on 09.03.2009.

<sup>18</sup> Bulgaria/*Годишен доклад на Комисия за защита от дискриминация за 2007 г.* [2007 Annual report of the Protection Against Discrimination Commission], p.15, available in English at: <http://www.kzd-nondiscrimination.com/images/stories/pdf/annual%20report%202007.pdf> (last accessed on 10.03.2009).

Legal Aid Act<sup>19</sup> provides that legal aid might be provided in civil cases when evidence from the relevant authorities are presented to prove that the party has not financial means to pay for legal aid. The court takes into account the income of the person or the family, property status certified with a declaration, family, healthcare and employment status, the age and other circumstances. The applicant should apply before the court for legal aid and the latter is to decide whether to allow it or not.<sup>20</sup> The Civil Procedure Code (2008) provides that legal aid is ensuring defence by legal counsel free of charge.<sup>21</sup> It is provided upon an application for legal aid, submitted by the party in writing to the court where the case is pending. The court specifies the type and scope of the legal aid granted in its ruling. The latter has effect as from the submission of the application, unless the court decrees otherwise. The decision is issued in camera, unless the court decides it is necessary to hear the party in order to clarify all circumstances. The ruling with which legal aid is refused is appealable by an interlocutory appeal. The ruling of the court on the interlocutory appeal is final.<sup>22</sup> In practice, most of the reviewed discrimination cases were initiated and lead by attorneys-at-law who work for human rights NGOs and provide in principle *pro bono* legal aid to the applicants. In none of the reviewed cases legal aid was sought or allowed for the applicant.

Legal aid is not provided for the parties in non-judicial procedure before the equality body, the Protection Against Discrimination Commission (PADC). The fees for the procedure before the equality body as well as the expenses are paid by the state budget according to PADA.

There are not any provisions to shift the expenses of the attorneys at law to the state budget so they are to be paid by the complainant. According to the relevant law, litigants are free to represent themselves. In the proceedings before the PADC, there is no obstacle for NGOs to engage although there is not rich case-law yet. NGOs and other organisations even can engage in the proceedings without the consent of the complainants in some cases.

The procedural role of NGOs in Bulgaria in antidiscrimination cases is provided for in legislation in a manner which gives the NGOs and the victims all means for protection. Thus many of the cases on the grounds of racial and ethnic discrimination before the PADC and civil courts were initiated by NGOs and were won by them. This role is very important as the victims of ethnic discrimination often suffer poverty, isolation, lack of access to education and lack of awareness of mechanisms for protection against discrimination. Therefore if there were

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<sup>19</sup> Bulgaria/Закон за правната помощ [Legal Aid Act] (01.01.2006), Art 23, para. 4.

<sup>20</sup> Bulgaria/Закон за правната помощ [Legal Aid Act] (01.01.2006), Art 25.

<sup>21</sup> Bulgaria/Граждански процесуален кодекс [Civil Procedure Code] (1.03.2008), Art.94.

<sup>22</sup> Bulgaria/Граждански процесуален кодекс [Civil Procedure Code] (1.03.2008), Art. 95.

no NGOs to initiate and support antidiscrimination procedures it would have been very likely that the victims would never receive protection and assistance. Yet, there still only a very few NGOs that offer legal aid, consultations and legal representations to the victims of discrimination.

## 9. Forms of satisfaction available to a vindicated party

Under national law, the civil courts can award compensation for damages. There is no maximum amount of compensation.<sup>23</sup> The courts can award any amount that is fair. The courts can make a declaration of discrimination and award compensation for damages, as well as order respondent to take remedial action, or to refrain from, or to terminate particular action or inaction found to be in breach of the law. The equality body, too, can make a finding of discrimination, and order preventive or remedial action. Under the Protection Against Discrimination Act, the equality body has powers to impose financial sanctions between the equivalents of 125 and 1,250 Euro.<sup>24</sup> These sanctions are administrative fines and are not awarded to the victim as compensation but go to the state budget. Where a violation is repeated, the sanction is double.<sup>25</sup> Those sanctions are uniformly applicable to all sectors and fields, including the private and public ones, as well as fields outside employment.

In several cases of the reviewed antidiscrimination cases the compensation awarded by the Supreme Cassation Court was 5,250 Euro for inaccessible architectural environment in public buildings for people with physical disabilities. This is the biggest amount of compensation awarded since the Protection Against Discrimination Act (PADA) is in force. The second biggest amount was awarded to Roma applicant whose access to electricity was regularly terminated because of the rules introduced regarding his neighbours who did not pay their bills on time, although he did not have unpaid bills. His compensation was 2,000 Euro and the court decision was executed. The third biggest compensation is 1,250 Euro for discrimination of persons with mental illness regarding access to medication by the Ministry of Healthcare (the case took two years, passed only two court instances and is already executed). In all the rest antidiscrimination cases the compensation varies from 50 to 300 Euro for non-pecuniary

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<sup>23</sup> This concerns indemnification of a victim's pecuniary or non-pecuniary damages whatever those might be in the particular case, and not financial punishment by the state by decision of the equality body.

<sup>24</sup> Bulgaria/Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 78-80.

<sup>25</sup> Bulgaria/Закон за защита от дискриминация [Protection Against Discrimination Act] (01.01.2004), Art. 81.

damages caused by denying access to public services like cafes, swimming pools, shops, employment for Roma people.

Judging by the courts' reasoning in their decisions, they are inclined to find discrimination and to oblige the violator to refrain from discrimination in the future but are reluctant to award financial compensation to the victim. This is how they either reduce the sought amount or reject the claim in this part. Having in mind that most of the victims are poor, uneducated and systematically discriminated in different spheres of life, the compensations are not adequate. There was not information that those compensations that were 5,250 Euro each had been paid to the victims either.

## 10. Adequacy of compensation

According to reviewed cases the average amount of compensation for non-pecuniary damages varies between 25 (one case of a Roma woman denied of access to healthcare services after an abortion) and 5,250 Euro (five cases for inaccessible architectural environment for people with physical disabilities). In most of the cases regarding access to public services such as swimming pools, shops and cafes, the courts have awarded 50 to 300 Euro. Only in one case of a Roma person in whose house the electricity was cut regularly because of the debts of his neighbours in the ghetto, the courts have awarded 2,000 Euro. The research found that only several judgments were implemented – 2,000 Euro was paid to the Roma person (whose case was described above), 1,250 Euro - to a mentally ill person denied of access to medication, 300 Euro – to a Roma woman denied access to a café.

Taking into consideration the violated rights of the vindicated parties and the length of the court proceedings, the sanctions and financial compensations are ridiculously low to be effective and proportionate. Besides, the courts delay their decisions often beyond the legitimate term because of lack of people and resources for their in-time investigation and proceedings which makes the sanctions even less effective.

## 11. Rules relating to the payment of legal costs

General rules regarding legal costs

Stamp duties on the cost of the claim and court costs are collected upon conduct of the case.<sup>26</sup> Where the action is unappraisable (not subject to a specific scale), the amount of the stamp duty is to be determined by the court.<sup>27</sup> There are simple and proportionate stamp duties. Simple duties are determined on the basis of the material, technical and administrative expenses required for the proceeding and proportionate taxes are determined on the basis of the proprietary interest. The stamp duty is collected upon submittal of the claim for protection or facilitation and upon the issuing of the document for which duty is paid, according to a tariff adopted by the Council of Ministers.<sup>28</sup> The remuneration of witnesses is determined by the court considering the time allocated and the expenses incurred, and the remuneration of expert witnesses is determined by the court considering the work done and the expenses incurred.<sup>29</sup>

Each party makes an advance deposit to the court for the costs for the steps which the party asked for. The amounts for costs for steps on a motion by both parties or on the initiative of the court are deposited by both parties or by one party depending on the circumstances.<sup>30</sup> Fees and costs of the proceeding are not deposited by any natural persons who have been found by the court to lack sufficient means to pay the fees and costs.<sup>31</sup> Considering the petition for waiver, the court takes into consideration: the income accruing to the person and to the family; the property status, as certified by a declaration; the family situation; the health status; the employment status; the age; other circumstances ascertained. Where the case has been decided in favour of a person for whom payment of stamp duty or of costs of the proceeding is waived, the person found against is obligated to pay all fees and costs to the court.<sup>32</sup>

If the claim of a recipient of legal aid is granted, the lawyers' fees paid are awarded in favour of the National Legal Aid Office proportionately to the granted claim.<sup>33</sup> In the cases of a judgment adverse to the recipient of legal aid, the latter owes costs proportionately to the rejected claim. A lawyer's fee is awarded in favour of legal persons and sole traders, if the

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<sup>26</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.71.

<sup>27</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.71.

<sup>28</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.73.

<sup>29</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.75.

<sup>30</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.76. Pursuant to Art. 78 the fees paid by the plaintiff, the costs of the proceeding and the fees for one lawyer, if any, are paid by the respondent proportionately to the claim granted. If the respondent has not caused the initiation of the case by his/her behaviour or if the respondent admits the claim, the costs are awarded against the plaintiff. The respondent has the right to ask for payment of the costs incurred by the portion of the rejected claim. The respondent is entitled to costs even upon dismissal of the case. If the fees for a lawyer paid by the party are excessive considering the actual legal and factual complexity of the case, the court, acting on a motion by the opposing party, may award a lower amount of the costs in this part, but not less than the minimum amount set in the Attorneys-at-law Act.

<sup>31</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.83, para.2.

<sup>32</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.76, para.6.

<sup>33</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.78, para.7.

persons and traders have been defended by a legal adviser.<sup>34</sup> Upon conclusion of the case by a settlement, half of the stamp duty deposited is refunded to the plaintiff. The costs of the proceeding and of the settlement shall be borne by the parties who incurred the costs, unless otherwise agreed.<sup>35</sup>

### Special rules for legal costs in antidiscrimination cases

The antidiscrimination proceedings both before the civil courts and the Protection Against Discrimination Commission (PADC) are free of administrative or judicial fees and charges for the applicant.<sup>36</sup> Yet, the courts often widely violate the law by obliging the applicant to transfer the fee.<sup>37</sup> According to the relevant law, litigants are free to represent themselves in both the judicial and quasi-judicial procedures.<sup>38</sup> However, in practice, litigants without a lawyer would be at a disadvantage in court where proceedings are complicated and formal. Before the equality body, which has quasi-investigative powers and whose proceedings are more informal and victim-friendly, complainants are not that dependent on a lawyer. On the other hand, the equality body is located in the capital, which poses a geographical barrier for some.

## 12. Rules on burden of proof

Shift of burden is another problem although well explained in Protection Against Discrimination Commission (PADC) and courts' decisions still it is not properly implemented in practice. Still the very claims of the respondent about lack of intention or denial of facts about the discrimination act is taken from courts and sometimes PADC for granted and it is left to the victims/complainant's to prove that the discriminative act took place. This strongly violates the law. Besides often judges have ruled that respondent is required to prove a "negative fact", i.e. that they have not discriminated, instead of expecting them to prove a

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<sup>34</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.78, para.8.

<sup>35</sup> Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (1.03.2008), Art.78, para.9. Exceptions of the general rules are described in Art. 83, para.1 - Fees and costs of the proceeding in the cases should not be deposited: by the plaintiffs who are factory or office workers or cooperative members in respect of any actions arising from employment relationships; by the plaintiffs: in respect of any actions for maintenance obligations; on any claims brought by a prosecutor; by the plaintiff: in respect of any claims for damages sustained as a result of a tort or delict, for which a sentence has entered into effect; by the *ad hoc* representatives of the party whose address is unknown, appointed by the court.

<sup>36</sup> Bulgaria/*Закон за защита срещу дискриминация* [Protection Against Discrimination Act] (01.01.2005), Art.75, para.2.

<sup>37</sup> 'Case-law of civil courts under the Protection Against Discrimination Act', 2009, Sofia, Margarita Ilieva, attorney-at-law and national expert from the EC Legal Network for non-discrimination, p.195, available only in Bulgarian in hard copy.

<sup>38</sup> For Supreme Court proceedings, both administrative (or judicial review) and civil, appellants only need to have a lawyer or *juris consult* to countersign their cassation appeal (Art. 284, para.2 of the Civil Procedure Code and Art. 18, para. 1 of the Administrative Procedure Code) but the law does not require them to be represented at hearings.

legitimate reason for the treatment that had nothing to do with the protected ground, which is a positive fact. The PADC does not use statistics in its monitoring activities and does not collect any data. However, there is no obstacle for statistics' use during the proceedings before PADC and the courts.