



HOW TO FILE A CASE IN THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION



**COMMISSION FOR PROTECTION AGAINST
DISCRIMINATION**



MANUAL

HOW TO FILE A CASE IN THE COMMISSION FOR
PROTECTION AGAINST DISCRIMINATION?

SOFIA, 2008

This manual "How to file a case in the Commission for Protection against Discrimination?" was elaborated within the framework of Project VS/2007/0455 "Partners in the fight against discrimination" under the EU's Programme PROGRESS, implemented by the Commission for Protection against Discrimination and the European Institute Foundation.

The accession of Bulgaria to the European Union has set new challenges for us, Bulgarian citizens, especially in respect of legislative changes, which affected various spheres of our life and which had to bring our national legislation in compliance with the European one. Unquestionably, we are already Europeans, but are we familiar with our rights, are we able to stand up for them by ourselves and defend them vis-à-vis public authorities and institutions, as well as local and judicial authorities?

The Commission for Protection against Discrimination was established and is operating as part of the national Bulgarian mechanism for protection of human rights and fundamental freedoms for everyone, in fulfilment of international obligations taken by the Republic of Bulgaria, both universal on the UN level and its specialized institutions as well as regional within the Council of Europe and the European Union.

This manual is designed for people without a juridical education. The manual is meant to familiarize the Bulgarian citizens and any foreign citizens residing on the territory of the Republic of Bulgaria with the general provisions of the Protection from Discrimination Act, to support physical and juridical persons in their proceedings before the Commission for Protection against Discrimination - from the time of lodging a complaint or signal until a decision is pronounced as well as in monitoring its implementation.

This manual is published by the Commission for Protection against Discrimination. The publication of the manual is supported by the Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013).

Disclaimer: The manual reflects the author's opinion and the European Commission shall not be liable for any use of information contained herein. The information contained in this publication is not necessarily reflecting the European Commission's position or opinion.

Commission for Protection against Discrimination
1125 Sofia, 35 Dragan Tzankov Blvd.
Tel. ++ 359 2 807 3030
Fax ++ 359 2 870 6446
e-mail: kzd@kzd.bg
www.kzd-nondiscrimination.com

European Institute Foundation
Sofia 1000, 96 G.S.Rakovski Blvd.
Tel. ++ 359 2 988 6410
Fax: ++ 359 2 988 6411
e-mail: office@europe.bg
www.europeaninstitute.bg



Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013).

Decision No 1672/2006 of the European Parliament and of the Council establishing a Community Programme for Employment and Social Solidarity – PROGRESS was adopted on 24 October 2006 and published in the Official Gazette on 15 November 2006. The general objective of PROGRESS is to financially support the fulfillment of the European Union's objectives in the field of employment and social solidarity, as stated in the Social Agenda and in this way to contribute to achieving the Lisbon Strategy objectives in these fields.

PROGRESS' mission is to enhance the European Union contribution in support of the commitments of the Member States and their efforts to create more and better jobs and to build-up a more united society. For that purpose PROGRESS shall:

- Provide analysis and recommendations for the policy concerning PROGRESS' fields of policy;
- Supervise, monitor and report on the implementation of the EU legislation and policies in PROGRESS' fields of policy;
- Promote the transfer of policies, knowledge and support between Member States concerning the EU objectives and priorities;
- Relay in full the opinions of the stakeholders and the society.

The seven-year programme is oriented to all stakeholders who are able to assist in the development of appropriate and effective employment and social legislation and policies, in all 27 EU Member States and in the EFTA and EEA countries, in Croatia, Former Yugoslav Republic of Macedonia and in the EU presenter countries and Serbia.

For more information, please visit:

http://ec.europa.eu/employment_social/progress/index_en.html

http://ec.europa.eu/employment_social/progress

European Union's Campaign for fighting Discrimination: "For Diversity. Against Discrimination." For more information, please visit: www.stop-discrimination.info

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

CONTENTS

Introduction.....	5
-------------------	---

SECTION ONE

Types of discrimination. Protection mechanisms

1. Commission for Protection against Discrimination.....	7
2. Types of discrimination.....	8
3. Proceedings before the Commission.....	10
4. Initiation of proceedings before the Commission.....	12
5. When shall proceedings before the Commission be not instigated.....	12

SECTION TWO

Investigation

1. Sitting panels at the Commission.....	13
2. Investigation procedure – collection of evidences in connection with the correspondence.....	13
3. Burden of adducing evidence, types of evidence and evidence collection.....	15
4. Confidentiality.....	16
5. Attracting of external experts (expert witnesses) and assignment of expert examination - goals. Procedure of assigning expert examinations.....	16
6. Parties to proceedings before the Commission, notices on familiarization with the collected materials in connection with the correspondence and familiarization with those materials.....	17
7. Final report.....	18

SECTION THREE

Trial in essence and pronouncement of decision

1. Summons.....	19
2. General rules of holding sessions.....	20
3. First session.....	21
4. Agreement to conciliate.....	22
5. First session in essence and subsequent sessions.....	22
6. Decision – pronouncement and contents.....	23

SECTION FOUR

Appeal against the decisions of the Commission for Protection against Discrimination

1. How shall an act pronounced by the Commission, be appealed?.....	25
2. Procedure of appeal against an act pronounced by the Commission before the Supreme Administrative Court.....	25

SECTION FIVE

Control over the implementation of the Commission's decisions

1. Realization of monitoring over the observance of decisions pronounced by the Commission...27

2. Other ways to monitor.....29

ANNEXES:

1. Annex No 1.....30

2. Annex No 2.....34

3. Annex No 3.....35

4. Annex No 4.36

INTRODUCTION

We live in a world, which is a palette of human individualities, communities of people and cultures. The modern world is a world of diversity. Harmony in diversity may be reached through tolerance, collaboration and mutual help and not through abstract sympathy and statements. Tolerance presumes mutual respect, acceptance and understanding of the rich diversity of peoples, nations, social groups, individual people, cultures, religions and traditions. Tolerance means not concession, condescension or reconciliation but a necessity to reach peace and understanding amongst people.

Tolerance is first and foremost an active attitude formed on the base of acknowledging the universal rights and fundamental freedoms of any person, as well as collaboration for achieving mutually acceptable and beneficial solutions of the problems arisen and nonadmission of imposing unilateral views in favour of only one or another group of people.

Manifestation of tolerance is consonant with respect to the individual person as a supreme value of human civilization, of a person's unique identity and universally recognized rights and freedoms. Tolerance is the base to achieve equality between the individual people, equality in the provided opportunities for realization, prevention and elimination of all forms of discrimination in respect of nations, peoples, states and other human communities, differentiated on the base of common race, religion, culture, traditions, language, ethnic origin, sex or other criteria.

Discrimination means unequal treatment in various forms leading to differentiation or division, or setting in a privileged position of a person, group of people or entire communities. The modern democratic society defines by this term an unjust, unequal treatment of people according to their sex, race, nationality, ethnic belonging, human genome, citizenship, origin, religion or belief, education, convictions, political belonging, personal or social position, disability, age, sexual orientation, marital status, property status and many other criteria.

Discrimination exists where there is deliberate official or unofficial division of people in individual groups according to a common ground, at which they are granted rights, privileges, opportunities setting them in a privileged position or they get imposed obligations, their opportunities are being limited and/or they get deprived of rights and freedoms, which sets them in a more unfavourable position.

We live today in a democratic society, where the principle of equality and equal opportunities for every person expressed as tolerance, prevention and elimination of discrimination, underlies the legislation of the European family states.

Regardless of the fact that the guarantor for the citizens' equality in our country shall be the Constitution of the Republic of Bulgaria, and in particular its Article 6 proclaiming that all people have been born free and equal in dignity and rights, and that all people are equal before the law, the adoption of a special law for fighting against and for protection from discrimination has been an important condition for Bulgaria's accession to the European Union. On 01.01.2007 Bulgaria accessed to the European Union Treaties. By that time Bulgaria had already introduced numerous Directives on equality as Directive 2000/43/EC of 29 June 2000 concerning the application of the principle of equal treatment of persons, regardless of race or ethnic origin, Directive 2000/78/EC of 27 November 2000 concerning the establishment of a framework for equal treatment in employment and exercise of occupation, Directive 2002/73/EC of the European Parliament and the Council amending and supplementing Directive 76/207/EEC concerning the application of the principle of equal treatment of men and women in respect of their access to employment, occupational training and development and the working conditions, as well as many other directly oriented to prevention and elimination of discrimination in numerous specific fields.

Already on 16 September 2003 the National Assembly adopted the Protection against Discrimination Act, which entered into force on 1 January 2004. Later its title was changed to Protection from Discrimination Act (PfDA, published in the State Gazette, No 68/2006).

The adoption of this law is an important moment in the process of approximation of Bulgarian legislation to European standards in the field of equality, equal opportunities, equal treatment and prevention and elimination of discrimination in public relations.

The purpose of the Protection from Discrimination Act is to provide to any person rights as follows:

- the right of equality before the law,
- equality in the treatment and the opportunities for involvement in the social life and
- effective protection against discrimination.

The Commission for Protection against Discrimination (Commission), which was formed in April-June 2005, shall exercise control over the application and observance of the Protection from Discrimination Act and other acts regulating the equality in treatment. During its nearly three-year old history the Commission established itself in society as an actively operating public authority for prevention, control and protection from discrimination. During the last one year and a half, the number of complaints and signals from citizens, juridical persons, public and local authorities, as well as nongovernmental organizations increased constantly. Such tendency unquestionably establishes the enhanced sensitivity of Bulgarian society to discrimination deeds and intensifies civic activity in defending human rights and freedoms for everybody, as well as intolerance to discrimination deeds as unequal treatment. On the other part, the fact that increasingly more citizens turn to the Commission for protection of their violated rights, gave rise to the idea to elaborate this manual. Its main purpose is to set the issue for fighting discrimination along two lines:

1. Educational - on the one part, through publishing the manual to familiarize the citizens, their informal formations, firms, trade unions, nongovernmental organizations and other social societies with the human rights and opportunities for protection from discrimination of such rights before the Commission for Protection against Discrimination.

2. Specialized – by utilizing the manual the citizens, their informal formations, firms, trade unions, nongovernmental organizations and other social societies shall be able to consult themselves about the activity of the Commission for Protection against Discrimination, to be able with no juridical interference to participate alone and at the same time to follow the process from the time of lodging a complaint or signal, through investigation, sessions of panels, production of a decision on the dispute, appeal and implementation of the decision taken.

SECTION ONE

TYPES OF DISCRIMINATION; PROTECTION MECHANISMS

Discrimination is prohibited in all fields of social life. The physical and juridical persons, public authorities and institutions, as well as the local public authorities and institutions of local government shall be obliged to not admit unequal treatment leading to discrimination. The Protection from Discrimination Act provides for protection regardless of the field where discrimination was committed - in all fields of public social relations, eliminating the purely private relations as for example family relations, and shall protect all unequally treated persons. Such can be both physical persons - either Bulgarian citizens or foreigners residing in the territory of the country and juridical persons, if their members and employees are discriminated on the grounds of the criteria specified in the PfDA. This Act prohibits discrimination realized both by action and inaction.

How shall we protect ourselves?

The Protection from Discrimination Act provides for specific mechanisms for protection from discrimination.

They include a procedure before the specialized Commission for Protection against Discrimination or initiating a legal action before a district court. The choice, which of the two mechanisms will be employed, shall be made by the person seeking protection.

The reasons, that can motivate a person to address the Commission as an independent specialized public authority, are as follows: quick, effective and free proceedings. The Commission, in contrast to the Court, shall actively support the affected persons, shall orient the parties what evidence to submit and shall exercise controlling function in respect of the decisions made. For proceedings before the Commission, no state fees shall be collected. The expenses incurred in the course of proceedings shall be at the expense of its budget.

1. Commission for Protection against Discrimination (Commission)

The powers of the Commission for Protection against Discrimination shall be: to realize control over the application and observance of the Protection from Discrimination Act and other acts regulating the equality in treatment and to undertake the relevant measures to prevent actions leading to discrimination, including and through elucidatory campaigns, independent studies, consultations and compulsory prescriptions; by establishing violations; imposing administrative sanctions and compulsory administrative measures; delivering compulsory prescriptions to employers and officials to remove violations of the legislation in view to prevent discrimination and discontinuance of discrimination. The Commission is not entitled to legislative initiative but it may deliver opinion on drafts of normative acts and to make recommendations for adoption, amendment and cancellation of acts.

At the Commission for Protection against Discrimination, five permanent three-member specialized panels have been constituted and any of them shall examine complaints and grievances in respect of several grounds, as listed in the PfDA. In the case of multiple discriminations, five-member panels shall be constituted and for special proceedings, ad-hoc panels shall be created.

2. Types of discrimination

Direct discrimination

Direct discrimination means any more unfavourable treatment of a person compared to another in a similar situation on the grounds of the criteria specified in PfDA. What shall this mean?

First, it must be pointed out that not every unequal treatment means discrimination. In order to accept that a person is victim of discrimination, the same person must have one of the criteria specified in the Act. The criteria are listed non-exhaustively in the Act and cover sex, race, nationality, ethnic belonging, human genome, citizenship, origin, religion or belief, education, convictions, political belonging, personal or social position, disability, age, sexual orientation, marital status, property status, as well as any other grounds established by law or in a Treaty, to which the Republic of Bulgaria is a party of. We can see that the criterion means some characterization distinguishing one person from another or from human communities. Generally, exactly such characterization is not accepted or is demonstratively denied by another person or community or is associated with specific behaviour, including aggressive, humiliating the human dignity or disregarding, intolerance to other views, traditions, culture, language, self-consciousness, religion, belief or convictions. All of the above listed is prohibited by law – to approach things with prejudice, to not accept diverse things, to deny rights and freedoms of another person, which such person as well as any of us has by right. People are born free and equal in rights and nobody shall be entitled to deny this generally accepted principle. Exactly this is the PfDA purpose, building on the idea of fighting, preventing and punishing actions leading to discrimination. This Act shall enforce social behaviour expressed in respect to the other person who is not like you, to not deny such person and to respect him or her as a human being. The above criteria listed in the Act, as well as all other non-listed ones but objectively existing, **CAN NOT** and **MUST NOT** become reason for different treatment **OF ANY HUMAN BEING**.

There are numerous examples of direct discrimination – starting from a lower payment only because the employee is a woman and reaching the denial to hire a job candidate only because such candidate is of another race, religion or belief or convictions, sexual orientation, different ethnic origin, up to dismissal, because the person has a disability and is on a wheelchair or because a person becomes “inconvenient” due to his/hers political views or trade union belonging etc.

Indirect discrimination

Indirect discrimination means the application of a seemingly neutral provision, criterion or practice setting a person in unequal position compared to another person in similar situations, with no objective justification for it. Indirect discrimination is generally hidden, it is hard to establish and substantiate. With it, everything seems in the first sight in compliance with law. However, the exactly opposite result is achieved in practice. For example, indirect discrimination has been proven by the Commission in a case, where the Mayor of a specific municipality denied holding an event by an organization for the protection of rights of persons with different sexual orientation in Bulgaria. By a legal method, namely an order of denial, it became discrimination of persons with non-traditional sexual orientation, who are human beings and possess all the rights of people with heterosexual orientation.

In the indirect discrimination and in many cases also of direct discrimination, we should seek if there is a specific legal reason for such behaviour, if by it a legal purpose is

pursued and the means for its achieving are appropriate and required. For example, a provisional measure to stimulate younger people to apply for assistant posts at a university will not be discrimination, because it will have a reasonable substantiation and legal purpose. If, however, this is the university's policy denying the access to older teachers, it will be already a discriminative practice.

Harassment

The Protection from Discrimination Act shall also prohibit harassment on the grounds of the criteria listed both in the Act itself and in other acts or Treaties concerning a victimized person. Harassment shall be any undesired behaviour of a person in respect of another, expressed in physical, verbal or other actions. Such behaviour either has for its purpose, or leads to insulting a person's dignity and creates an environment of hostility and offensiveness or threatening environment for the victim. Each person perceives differently harassment and we may not proceed from some „**average criterion for tolerability**“. We should take into account the specific consequences that have resulted for the victimized person and the situation, where that person was set. The most often occurring example of harassment is harassment in the workplace exercised by the employer or a superior.

Sexual harassment

Sexual harassment shall be any undesired behaviour of sexual nature, expressed in a physical, verbal or another way insulting the dignity or honour of a person and a hostile, humiliating or threatening environment is created. If some behaviour on sexual base comprises data of a crime within the meaning of the Penal Code, the correspondence shall be sent to a public prosecutor and the proceedings before the Commission shall be brought to a standstill. If some behaviour comprises data of sexual harassment but no data for a crime, it shall fall within the Commission's competence. In Bulgaria sociological and other studies of the last ten years indicate that sexual harassment exists but the society, due to existing stereotypes, fails to discuss that problem. The fear of losing the job or of persecution by the person committing acts of sexual harassment also plays a role.

Persecution

Persecution exists, if a person is made subject to different and bad attitude due to a lodged grievance concerning discrimination or supposition that such grievance concerning discrimination will be lodged, or if a person supports another person, who made complaint concerning discriminative attitude. Persecution is prohibited by law. Persecution exists also if a person is set in a more unfavourable position, because such person has denied performing actions, which could lead to discrimination.

Very often a person is afraid to complain of discrimination, because he or she may lose a job. And exactly because of such possibility, when examining cases of discrimination in the workplace, the Commission shall warn the employer of the liability born in case of persecution. Generally, such signals have preventing effect. Lately, as a new form of persecution, the employer would bring in a prominent place the complaint or signal by persons, who addressed the Commission seeking protection in order to intimidate the staff in view to not take part as witnesses in the proceedings.

Instigation of discrimination

Instigation of discrimination shall be any direct and deliberate encouragement, delivery of instructions, rendering pressure or persuasion to commit discrimination, if the person who is persuaded to perform discriminative actions is dependent on the person instigating such actions.

Multiple discriminations

Multiple discriminations shall be characterized in that a person is set in a more unfavourable position compared to another person in comparable similar circumstances on the grounds of several criteria. For example, a woman is discriminated not only because she is a woman but also because she is of different ethnic origin or an unmarried mother. Multiple discriminations would be present also if a person has a disability and is of specific age.

Racial segregation

Racial segregation is one of the most dangerous forms of discrimination. With it, the idea of objective justification is excluded. Racial segregation shall be the issue of an act or accomplishment of an action leading to compulsory division or segregation of a person or group of persons from the main part of the population on the grounds of the person(s)'s race, ethnic belonging or skin colour. Racial segregation may be the result of actions accomplished by public or local authorities, by employers or social groups.

Construction and maintenance of inaccessible architectural environment

Public and local authorities in the Republic of Bulgaria have a responsibility to adapt all buildings, which are public or municipal property, to the needs of persons with disabilities. The purpose is to guarantee the access of persons with disabilities to services offered by such institutions and their equal participation in social life.

3. Proceedings before the Commission

Initiation of proceedings

The Commission may be approached in several ways for cases of discrimination: based on a complaint, signal or upon its initiative. Where there is self-approach by the Commission, a written report shall be drafted by a member or members of the Commission addressed to the Commission's Chair.

In order to bring about proceedings before the Commission, the complaint or signal must meet the requirements specified in the Protection from Discrimination Act.

Contents of the complaint or signal

A complaint or signal addressed to the Commission must be in written form and in the Bulgarian language. Signals for committed discrimination may be addressed to the Commission also by third persons – physical and juridical, public and municipal authorities. If a complaint or signal has been written in a foreign language, it must be accompanied by a legalized translation

The complaint or signal must be addressed to the Commission's Chair. All three names of the filing party must be given and also his/her address and telephone number for contact. Desired will be also a fax number and an email address, should the filing party possess such.

If a complaint or signal is lodged by a juridical person, also the registered office of the juridical person shall be indicated.

When lodging a complaint by a foreigner, the address declared at the relevant office for administrative control of foreigners shall be given. *A model complaint and signal is given in Annex No 1.*

In the complaint or signal the filing party may specify a ground or criteria, for which the filing party believes that he or she is discriminated. It is necessary that the filing party indicates the perpetrator and how is the possible discriminative act expressed. The complaint or warning must comprise the date and signature of the person lodging it or of the person's representative. Anonymous and oral complaints and signals shall not be examined by the Commission.

With the complaint or signal the following shall be enclosed:

- letter of attorney, if submitted by an attorney;
- declaration by the complainant or the person lodging a signal that by the time of lodging the complaint or signal with the Commission, no judicial case has been initiated covering the same subject and the same parties. *Declaration model – refer to Annex No 2;*
- the court decision on registration and a certificate of actual status of the juridical person shall be submitted, if lodged by a juridical person;
- documents and papers in support of the complaint or signal and if they are not originals – legalized copies marked by the filing party with the text: „True copy”, with signature set.

The filing party of a complaint or signal may enclose also other evidence in support of his/her allegations and he/she may also indicate witnesses of the actions considered by the filing party to be discrimination.

Consequences of the irregularity of a complaint or signal

If a complaint or signal fails to meet the specified requirements, the Commission shall fix a term to remove irregularities. If such irregularities have not been amended within the term specified by the Commission, no proceedings before the Commission shall be initiated.

Contents of the report on initiation of proceedings, upon the initiative of the Commission

In the cases, where proceedings would be initiated upon the initiative of the Commission itself, the proceedings shall begin with a report drafted by a member or members of the Commission and addressed to the Commission's Chair. In the report, all three names and the post of the rapporteur/rapporteurs shall be given, with description of the violation and evidential material enclosed; in addition, the reasons to initiate proceedings should also be given. Following voting on such report, the members of the Commission shall by majority take decision on initiating proceedings.

The members of the Commission, on whose report the proceedings will be initiated, shall not be entitled to take part in the sitting panel and taking decision on such proceedings.

4. Initiation of proceedings before the Commission

Where a complaint or signal meets the PfDA requirements, the Commission's Chair shall issue an order, by which proceedings shall be initiated and shall assign the correspondence initiated upon complaint or signal according to the relevant ground, to be

tried by a specific specialized permanent sitting panel or if the specified criteria are two or more – by an expanded panel for multiple discriminations.

5. When no proceedings shall be initiated before the Commission?

No proceedings shall be initiated or initiated proceedings shall be terminated if:

- three years have passed since carrying out the discriminative act;
- it has been established that proceedings have been instituted before the Court concerning the same dispute;
- a complaint or signal has been withdrawn by the filing party or has not been amended within the term fixed by the Commission.

In these cases the Commission's Chair shall issue an order, by which the initiation of proceedings is denied. If proceedings were already initiated, it shall be terminated by the relevant specialized sitting panel by decision. The act, by which proceedings are not initiated or are terminated, shall be subject to appeal.

SECTION TWO

INVESTIGATION

1. Sitting panels of the Commission

At present, five specialized permanent sitting panels (SPSP) are operative at the Commission and in special cases the so called ad hoc sitting panels shall be constituted (panels of three Commission members, sitting in various SPSP's) and in the case of multiple discriminations, the correspondence shall be examined by expanded five-member sitting panels.

The permanent sitting panels of the Commission specialize based on grounds of discrimination, as follows:

- SPSP One - on the grounds of: race and ethnic belonging;
- SPSP Two - on the grounds of: sex, human genome and protection in exercising the right of labour and trade union activity;
- SPSP Three - on the grounds of: nationality, citizenship, origin, religion and belief;
- SPSP Four - on the grounds of: education, conviction, political belonging, personal and social position and property status”;
- SPSP Five - on the grounds of: disability, age, sexual orientation, marital status.

The permanent and the ad hoc sitting panels shall be constituted of three Commission members.

The received complaints and signals, where more than one ground is specified, i.e. if there is data about “multiple discriminations”, shall be assigned for consideration to the individual expanded panels, which shall be composed of five Commission members.

Nomination of sitting panels for the correspondence formed:

In order to initiate proceedings, on the grounds of the grievances stated in the lodged complaint or signal concerning discrimination based on the grounds specified in the PfDA, the Commission's Chair shall also nominate the relevant sitting panel, to which the correspondence formed shall be assigned.

Nomination of a rapporteur and chairperson of the panel:

The sitting panel members nominated for the correspondence, shall within seven days after the Commission Chair's order on initiation of proceedings, nominate among themselves a rapporteur and a chairperson of the panel. If the members of the panel fail to reach an agreement concerning the nomination of a rapporteur and a chairperson for a case-specific correspondence, they shall be nominated by the Commission's Chair.

2. Investigation procedure – collection of evidence in connection with the correspondence

After the members of the panel have nominated among themselves a rapporteur and a chairperson, the proceedings before the Commission shall develop in two main phases:

- phase of investigation;

- phase of consideration in essence.

Term of investigation:

The investigation shall be accomplished within 30 days, to be counted as from the date of nominating the chairperson and the rapporteur on the case-specific correspondence. In the case of actual or legal complexity, on proposal by the rapporteur for the case-specific correspondence, the Commission's Chair may by order extend the term of investigation by additional 30 days.

It is possible to establish that two or more files of correspondence are in a way linked between themselves – for example one and the same parties or one and the same subject. If so, the rapporteur for any of them may make a suggestion to the Commission's Chair to unite those files. If the Chair of the Commission estimates that such proposal is applicable, the latter shall decide by order such unification of files. In this way they will be examined in one proceedings and one decision will be pronounced for them. Such attachment shall be made with the aim to achieve procedural promptness and economy.

The terms of investigation shall stop running:

- where it is established that the rapporteur has been hindered during investigation by persons, public or local authorities and this is an obstacle for a full and thorough clarification of the circumstances about the correspondence;
- where the Commission is on vacation according to its Rules of Organization and Operation, namely from 15 July to 1 September every year.

If the Commission is on vacation, it will accept and lodge new complaints and signals, but the terms of investigation for them shall start running after 1 September of the relevant current year.

Course of investigation – legally established actions and objectives:

The rapporteur for the case-specific correspondence shall begin an investigation procedure, at which he or she shall collect evidence, required for a complete and thorough clarification of the circumstances stated in the complaint or signal.

During such work, the rapporteur shall be supported both by experts, who are the Commission's employees, and by external experts. The experts shall perform their activity under the rapporteur's leadership.

The experts, who shall be Commission employees, shall be nominated by order of the Commission's Chair for each correspondence individually. The experts shall collect, systemize and analyze the information required to clarify the circumstances about the correspondence. They shall support the rapporteur's work in realizing his/her powers, namely they shall:

- require documents and other information related to the investigation;
- require written explanations by the persons under investigation;
- interrogate witnesses.

In the course of the investigation all persons, public and local authorities shall render assistance to the Commission, and are obliged to provide the required intelligence and documents and to deliver explanations. The Commission may demand intelligence also from persons, who are not involved in the proceedings, if required for the clarification of significant facts and circumstances and they can not be established in another way. Public and municipal authorities approached by the Commission with the request for assistance within

their competence shall be obliged to provide the Commission with the required documents, which are needed to clarify the circumstances about the initiated correspondence, as well as to deliver explanations about their actions or inactions.

The existence of trade, business or another secret protected by law shall not give reason to deny assistance. If there is a reason to access classified information or personal data, they shall be provided pursuant to the Protection of Classified Information Act and the Protection of Personal Data Act. The necessary intelligence, documents and written explanations shall be demanded and collected from the persons or authorities under investigation, through letters of advice, where the rapporteur shall deliver specific instructions and specify a term, within which they should be submitted.

Compulsory collection

For failure to render assistance to a rapporteur on a correspondence in the course of investigation, the guilty persons shall bear liability under the PfDA. Commission members having higher juridical education shall be entrusted by order of the Commission's Chair to draw-up an act concerning the establishment of administrative violations. Such act shall be composed in the presence of the violator and two witnesses. If the violator fails to appear or denies signing an act, the latter may be composed in the violator's absence, which shall be attested by the signature of a witness.

If there is a risk of losing or hiding evidence or if it is especially difficult to collect them, upon request by the complainant or on initiative of the rapporteur the evidence may be collected compulsory from the persons or rooms, where they are located. A compulsory collection of evidence shall be performed by authorization of a judge from The Sofia City Court upon request by the Commission's Chair. On the day of receiving the request the judge shall pronounce by order, which shall be subject to immediate implementation. In the case of compulsory evidence collection the Commission may perform inspection of objects and collect evidence resources, needed for investigation purposes. In such cases the material evidence and the originals of the confiscated documents shall be returned to the persons, from whom they have been confiscated, after the correspondence has been concluded.

3. Burden of adducing evidence, types of evidence and evidence collection

Specific for proceedings before the Commission is the divided burden of adducing evidence. The person, alleging committed discrimination, should prove - based on relevant evidence the fact or facts of unequal treatment. In the same time the possible violator should submit evidence, where it must become evident that no violation of the right of equal treatment occurred.

The evidences are actual data related to circumstances about the correspondence and contributing to their clarification.

Written, oral and material evidence shall be collected for the proceedings.

Written evidences shall be any documents related to circumstances about the correspondence.

Oral evidence shall be the explanations given by the parties and the testimony of witnesses.

The material evidence shall be photo, video, audio, sound recording and materials received from official sources or taken and recorded by eyewitnesses; letters, cards, tickets, coupons, amateur picture etc. From the persons who submitted such materials, explanations and testimony shall also be taken, about the ways of shooting or recording the material, as well as the circumstances about its creation, with the purpose to confirm its authenticity.

Collection of evidence is the most important stage of the investigation process, because it is exactly the thing that creates the foundation for building-up the internal belief in the panel and pronouncing decision on the dispute. The collected evidential material has to meet the requirement for completeness and truth, in order to reach to correct decision. The official principle in the Commission's practice as administrative authority shall be also expressed in the fact that during the investigation process the rapporteur and the experts supporting that expert shall maintain permanent connection with the complainant or the signal filing party and shall direct such person to submit specific evidence in support of his/her grievance. The responding party, as well as the interested party, shall also receive instructions to submit written and material evidence. The rapporteur on the correspondence may request written, oral and material evidence also by third parties, if it will contribute to clarification of the correspondence, from a and legal point-of-view. The parties to the correspondence on the case shall be entitled to submit to the rapporteur written, oral and material evidences, on their own initiative.

4. Confidentiality

The documents collected and the information obtained on the correspondence shall be used for investigation purposes only.

In the cases, where the submitted evidential material contains information representing trade or business secret protected by law, it shall be kept pursuant to the Protection of Classified Information Act and the Protection of Personal Data Act in separate archives. Access to such archives shall have only Commission members, its specified employees and in exceptional cases also external experts nominated for that correspondence. The latter shall sign a declaration of confidentiality and shall be obliged to not disclose information they happened to learn at or on the occasion of performing their activity.

5. Attracting of external experts (expert witnesses) and assignment of expert examination - goals. Procedure of assigning expert examinations

In cases of high actual or legal complexity, whose solution specific knowledge is required, the rapporteur may demand the attraction of an external expert specialized in the specific field. The external expert is a person having specific knowledge in a specific field of social life (economical, technical, medical, etc.).

Procedure of assigning an external expert

An external expert may be assigned in two ways:

- 1) by order of the Commission's Chair, where the specific person who is expert in a specific field, shall be nominated;
- 2) by order of the Commission's Chair, where a request shall be addressed to a specialized institution to nominate an expert among its employees.

In both cases the assignment shall be made by order of the Commission's Chair, following a report by the rapporteur on the case-specific correspondence. The report shall specify the questions, for which expert conclusion shall be sought.

6. Parties to proceedings before the Commission, notices on familiarization with the materials collected in connection with the correspondence and familiarization with such materials

A person shall acquire the capacity of a party to proceedings before the Commission following his/her constitution as such, i.e. after the rapporteur or the entire panel have estimated that rights, freedoms or legal interests of the person have been or will be affected by an administrative act or if a decision of the panel will give rise to some rights or obligations for such person. The constitution of the person as a party to proceedings before the Commission would most often happen on the base of report - conclusion. It is possible that constitution is made already at the first session and this fact shall be written into the record of the session; it also may be made at any stage following termination of the investigation, by explicit act of the panel.

Parties to proceedings may be:

- complainant/filing party of a signal;
- responding party – this is the person/authority/employer, who committed the alleged act resulting in discrimination;
- interested party – any person/authority, who will be affected by the panel’s decision or if the decision will give rise to some rights or obligations for that party.

Following termination of the investigation, the rapporteur will already have formed an internal conviction about who will become parties to the proceedings. This is important, because with the capacity of party numerous rights are linked, the most important if which will be the right of protection. On the other part, it is obligation of the Commission to see to the observance of that right. And exactly with the observance of the right of protection is linked such sending of notices for familiarization with the materials in connection with the correspondence.

Following termination of the investigation within the legally established term, to the parties notices shall be sent, in view to get familiarized with the materials collected in connection with the correspondence (*refer to Annex No 3*). Such materials shall cover everything – from the complaint to any presented written and other evidence (for example recordings; the Commission has had multiple cases of complaints lodged on the occasion of television broadcastings for example, and the relevant material was demanded and enclosed with the correspondence). The notices of familiarization shall generally contain instructions about where and at what working time may a familiarization happen; also, a term for such familiarization shall be specified. Such term shall be instructive, because the parties may get familiar with the materials before the first session and this right can not be restricted. The term shall be specified rather as tentative term for the rapporteur on the case-specific correspondence, who - following expiration of such term, should produce a report - conclusion.

The parties, at getting familiar with the materials collected in connection with the correspondence, may submit new written and material evidence. Following their familiarization before the first open session, the parties may deposit to the Commission new evidence, make new requests for collection of evidence during an open session, deliver opinions on the collected evidence, make objections to collected evidence, as well as to change their requests to the Commission.

7. Report - conclusion

The report - conclusion shall be produced by the rapporteur on the case-specific correspondence and shall be presented to the chairperson in charge of the case-specific correspondence, in order to set a date for an open session. The report shall describe the facts and circumstances about the correspondence and shall list the evidence collected by that time, in order to get a clear picture of what shall be clarified during the open session and what should be still collected as evidential material. In the rule, the report shall be produced following the conclusion of the investigation and after the term for familiarization with the materials in connection with the correspondence has expired. The purpose shall be that the report includes also possible new opinions of the parties, objections made during familiarization, new evidence, which the parties have presented during their familiarization with the materials.

The report-conclusion is an internal act and shall serve for generalization and clarification of the actual environment. It shall be read at the first session, so that the parties are able to hear the actual conclusions of the rapporteur and if they judge that something has not been presented correctly, to be able object against it and to submit or request the collection of new evidence.

SECTION THREE

TRIAL In ESSENCE AND PRONOUNCEMENT OF DECISION

1. Summons

After having drafted a report-conclusion, the rapporteur shall present it to the chairperson of the panel together with the entire case. This shall be made in order for the chairperson of the panel, who will chair the open session, to get familiarized with the facts about the correspondence and the collected evidence and to set a date for an open session. The open session shall be scheduled within seven days following the report-conclusion's submission.

Setting a date for an open session shall lead to the next procedural action by the administrative authority, namely – summoning of the parties. Summoning is important, because its timely realization will enable to proceed at the open session. And, because proceedings before the Commission shall be grounded on the principle of promptness and effectiveness, a correct summoning will be a step to achieve it.

In the PfDA, reference is made to the rules of the Civil Code of Procedure in respect of summoning. What shall it mean?

Summoning to the Commission is generally made by registered letter with advice of delivery. This is the manner of summoning most commonly used by the Commission (*refer to Annex No 4*). Another manner used often is by telephone call, per fax or email, for example in cases, where sending a letter would take a lot of time. It happens also often that more than one manner is used– for example a registered letter with advice of delivery is sent and then the person is summoned also by phone. Summoning by phone or by fax shall be attested in writing by the expert, who performed it.

Basic rule for the proceedings shall be that a party is summoned not later than 7 days prior to the open session. This shall mean that a party shall dispose of at least 7 full days before the open session, in order to get prepared. This term is of significant meaning to secure the right of protection for the party. Besides, the parties who have been regularly summoned will be not summoned again, if trial is postponed for a next open session, because its date and time will be announced at the open session by the sitting panel in charge of the case-specific correspondence. This shall mean that, if a party has been regularly summoned but failed to appear and consideration of the correspondence has been postponed to another date, the party shall be responsible to keep track of the date fixed for the next open session. However, in not at all few cases, the Commission - in order to secure the right of protection, would announce the date of the next open session to a regularly summoned party who failed to appear.

Several other rules find also application in proceedings before the Commission. So, for example, a party living or leaving for more than one month abroad shall be obliged to indicate an address for summoning, if that party has no attorney in the territory of the Republic of Bulgaria. If that party fails to indicate an address for summoning, the summons shall be enclosed with the correspondence and shall be considered handed in. However, the party shall be advised by the Commission of the unfavourable result in the case of failure to indicate an address for summoning.

A party who changed permanently or timely the address announced under the correspondence, where the party has been already summoned, shall be obliged to advise the Commission of the new address. Such obligation shall be put down in the summons. In case this obligation has not been fulfilled, the summons shall be enclosed with the correspondence and shall be considered handed in. A trader or juridical person, who has been entered in the

relevant register, shall be summoned at the last address indicated in that register. If the trader or the juridical person has changed their address, failing to fulfil the obligation to enter such circumstance, all summons shall be enclosed with the correspondence and shall be considered handed in.

If necessary, summoning may be accomplished with the assistance of authorities from the Ministry of Interior.

2. General rules of holding sessions

The sessions of the Commission shall be open. The sessions' publicity shall guarantee that the rights of the parties will be respected and the citizens, the nongovernmental organizations and other stakeholders shall have access to the sessions; in this way, their impartial and objective holding on the part of the Commission shall be guaranteed. Publicity is a guarantee that the sitting panel will act impartially at the open session and in compliance with the law and will guarantee to the parties their right of protection.

Provisions of the Code of Civil Procedure shall be applied in respect of the grounds and procedure for holding sessions behind closed doors, as well as in respect of the grounds and procedure of member of the sitting panel.

The sessions shall be carried out behind closed doors as an exception, when:

- the social interest makes it necessary;
- the protection of the parties' personal life, of their families or of persons under guardianship makes it necessary;
- the correspondence has to do with trade, business, invention or tax secret, which – if publicly disclosed, would infringe interests under protection;
- other grounded reasons exist.

In such cases the panel shall rule officially or upon request by any of the parties that the correspondence shall be considered or some actions related to the proceedings shall be performed behind closed doors. In this case the parties, their proxies, experts and witnesses, as well as persons, to whom the chairperson allows it, shall be admitted to the court room. Holding of sessions behind closed doors should happen rarely and should be always related to protecting a highly significant interest. For example, sessions behind closed doors shall be held on correspondence concerning sexual harassment, where the presence of external persons would be especially embarrassing for the victim and should lead to undesired disclosure before third persons of aspects of the victim's intimate life.

A guarantee for a correct and impartial adjudication of the correspondence shall also be the possibility to demand rejection of a panel member. There are cases, where the impartiality of a panel member could be brought in question. Rejection shall be the mechanism to be used when a panel member shall be removed from considering a correspondence, for having some connection with the correspondence raising doubts for the way, in which such member would approach it impartially. The grounds for rejection have been provided in the Code of Civil Procedure. So, for example, a panel member shall not take part in proceedings if such member:

- is party to the correspondence on the case or, together with any of the parties to it, is subject to a disputable relation or to a relation linked to it;
- is a spouse or a relative in the direct line unrestricted, in the collateral line up to the fourth degree or by marriage up to the third degree of any of the parties to the correspondence on the case or of that party's representative;
- lives in actual matrimonial cohabitation with a party to the correspondence on the case or with that party's representative;

- has been representative or proxy of a party to the correspondence on the case;
- about whom there are other circumstances raising grounded doubt in such member's impartiality;
- has been involved in the adjudication of the correspondence or has been witness or expert witness to the correspondence.

The demand to remove a member of the sitting panel may be made by any of the parties during the first session after the reason for removal has arisen. The panel member in question shall also be obliged to leave, upon own initiative. The panel shall decide on the issue of removal with the involvement of the panel member.

3. First session

The first session is a key one in view of how the proceedings will go further. A party may participate in the session either in person or through a representative. If the party participates through representative, the panel may, as an exception, demand by the notice of summoning the party's personal participation. The same shall be valid also for the responding party. In some cases it is necessary that the responding party is interrogated in person by the sitting panel, in order to establish facts and circumstances in connection with the committed deed, alleged to be discrimination.

Proxies of the parties by proxy may be:

- attorneys;
- parents, children and spouses;
- legal advisers or other persons with juridical education belonging to juridical persons and other organizations;
- regional governors empowered by the Minister of Finance or the Minister of Regional Development and Public Works in the cases provided by law;
- other persons provided by law.

In compliance with the PfDA, the panel's chairperson shall at the first session invite the parties to reconcile. The legislator's logic is that it will be always better to settle a dispute voluntarily, than to waste funds and resources for its adjudication in an administrative procedure. If the parties express their desire to reconcile, the panel shall set a term for the parties to achieve reconciliation and present to the Commission an agreement in writing between themselves. The sitting panel shall examine the agreement on reconciliation achieved and if the panel accepts that it has been produced on the base of equal treatment, the panel shall approve it by decision and shall terminate the correspondence. If no agreement on reconciliation is achieved or in the case of partial reconciliation, the panel shall set a date for a new session, where the dispute or the part, for which no agreement was achieved, shall be examined in essence.

4. Agreement on reconciliation

The agreement shall cover mutual concessions or denial of claims on key issues of the dispute. It may also cover a promise by the responding party to restrain in the future from actions, which could lead to unequal treatment, as well as the responding party's obligation to put an end to violation and if possible, to restore the situation, as it was prior to such

violation. The agreement shall be approved by decision of the panel, if the panel judges that the principle of equal treatment has been observed and the agreement itself is not contradictory to law and morality and shall terminate the correspondence. The approved agreement shall be compulsory to the parties and shall enter into force on the date of its approval. It shall not be subject to appeal before the Court and the Commission shall exercise control over its observance. In achieving an agreement of significant importance is also the fact that the Commission will exercise permanent control over its observance. The panel agreement or partial agreement approved by the sitting shall be subject to compulsory implementation and the Commission shall exercise control over its observance.

An example of an interesting agreement is the one concluded between the Sofia District Court and the Minister of Justice, on the one part, and several human rights organizations, on the other part. The grievances of the complainants were about the hindered access of people with disabilities to the buildings, where the Sofia District Court is located. In the agreement, the specific reconstructions in the relevant buildings and the term for their implementation have been specified in detail.

5. First session in essence and subsequent sessions

In case at a session on reconciliation proceedings the parties fail to reconcile, the proceedings shall continue in essence. Other reconciliation proceedings on that correspondence shall not be fixed unless the parties themselves express the desire to achieve agreement in the course of proceedings in essence.

A session in essence shall be such session, where the parties shall set forth their arguments and objections concerning the dispute's substance, the witnesses shall be heard and new written and material evidence shall be accepted, aiming at clarifying the dispute from actual and legal point of view. During the first session in essence each party shall submit written evidence, shall make and substantiate all its requests and objections and to express its opinion on requests and objections made by the other party. At a session in essence, the witnesses indicated by the parties or constituted by the rapporteur, and the external experts for the case-specific correspondence shall be heard. If appropriate, the rapporteur on the case-specific correspondence may direct that a party or interested person appears in person, in order to deliver explanations. Any of the parties may bring witnesses and ask the panel to listen to them. If the panel considers it proper in view of clarification of the dispute in essence, the proceedings on the correspondence may be held in two or several sessions. At a subsequent open session the panel may, upon its judgment, rule the appearance of the parties in person, in order to deliver explanations, in case at the first session in essence they have been represented by proxies.

Having considered that the circumstances about the correspondence have been cleared, the chairperson of the panel shall give the parties the opportunity to deliver final opinions. If a party to the correspondence on the case requests so, that party's opinion may be presented to the sitting panel in written form within a term set by the sitting panel, to be counted as from the date of the session concerning that correspondence. Following hearing of the opinions delivered by the parties and under the condition that the dispute has been made clear from actual and legal point of view, the chairperson of the panel shall close the session and declare the correspondence for adjudication.

6. Decision - pronouncement and contents

The sitting panel shall pronounce its decision within 14 days following holding the session or following the term given to the parties to submit written final opinions on the evidences. This term shall be advisable, because there are items of correspondence characteristic for problems of serious nature, which requires additional investigation of legislation and judicial practice. The draft decision shall be drawn up by the rapporteur on the case-specific correspondence. The decision shall be made by simple majority of the sitting panel members by showing hands and shall be signed by them. A panel member disagreeing with the majority's decision shall sign the decision with dissenting opinion and shall provide reasons for it. A dissenting opinion shall be part of the decision.

The decision shall be made after the panel members have formed internal conviction based on the evidences collected in connection with the correspondence. The Rules of Proceedings before the Commission have been established in a manner to guarantee the impartial and free forming of internal conviction following the assessment of the ways in which evidence have been collected in the process of investigation by the rapporteur and during one or more judicial sessions. Any member of the sitting panel may request from the rapporteur the collection of specific evidences during the phase of investigation, as well as to attend their collection. At the open or closed session any member of the panel shall have equal rights in collecting evidences.

The decision of a Commission's sitting panel shall be administrative act, because the Commission is an independent and specialized governmental administrative authority.

The decision shall be put down in writing and shall contain:

1. name of the authority, i.e. Commission for Protection against Discrimination, and of the sitting panel (i.e. One, Two, etc.) issuing that decision,
2. actual and legal grounds for its issue, which shall mean that the decision shall be justified by discussing and assessing all evidences collected in the proceedings and conclusions shall be made, if there is committed violation representing discrimination and if so, who is the affected person and who is the violator;
3. dispositive part, namely the part, where the type and amount of the sanction and/or the compulsory administrative measure shall be specified, if imposed;
4. before what authority and within what term may such decision be appealed – this is important, because very often in proceedings before the Commission one of the parties is not content with the decision and has to be informed before what authority the decision may be appealed. The decisions of the Commission shall be appealed before the Supreme Administrative Court within 14 days following its notice to the parties.

By its decision the sitting panel shall:

1. establish a committed violation or establish that no violation has been committed, leaving the complaint non-honoured;
2. establish the violator and the affected person;

3. determine the type and amount of sanction, namely fine, if it is a physical person or property sanction, if it is juridical person (trade company, public or local authority, organization, employer);

4. apply following compulsory administrative measures, which may be:

a) delivering compulsory prescriptions to employers and officials to remove violations of the legislation on prevention of discrimination;

б) stopping the implementation of illegal decisions or orders of employers, which lead to or may lead to discrimination.

5. prevent or discontinue violation and, if possible, restore the initial situation.

SECTION FOUR

APPEAL AGAINST DECISIONS OF THE COMMISSION FOR PROTECTION FROM DISCRIMINATION

1. How shall be appealed an act pronounced by the Commission?

Decisions pronounced by the Commission for Protection against Discrimination shall be subject to judicial control - they may be appealed before the Supreme Administrative Court, because such decision is an administrative act. An appeal shall be made pursuant to the Administrative Procedure Code within 14 days following the notice to the parties. Such term shall start running on the day following reception of the notice that the decision has been drafted and it is individual to each party, i.e. it may differ in time. Upon expiration of that term, the right of appeal shall lapse. If a complaint is lodged then, it will be procedurally inadmissible and shall not be examined by the Court. For lawsuits conducted against acts issued by the Commission no state fees shall be collected and the expenses incurred in the course of proceedings shall be at the account of the Court's budget. In this way, this type of proceedings is distinguished from the general claims proceedings, where state fees shall be collected. This enables all legal subjects and generally the socially weak citizens, to protect their rights irrespective of their financial state, i.e. maximum accessibility to justice and jurisdiction is ensured. In the rule, a complaint shall be lodged via the Commission, in its capacity of authority issuing the administrative act attacked. Following its reception, the entire administrative case must be completed, legalized and sent to the Court together with the original copy of the complaint.

2. Appeal proceedings before the Supreme Administrative Court against an act pronounced by the Commission

Within two months following lodging a complaint, the Court shall constitute a case and notify the parties of the date of its first session. In such proceedings the Commission will be already in its capacity of responding party, in contrast to the specialized proceedings under the PfDA, where it is the authority making decisions. The cases shall be examined by a three-member panel of the Supreme Administrative Court of first instance. The parties may submit new evidences, if they dispose of such and make requests during the process. Each party shall set forth in arguments in defence of the thesis alleged. At the end of pleading, requests to the Court may be made. In the proceedings, also a representative of the public prosecutor's office shall be involved. This is required in view of the general function of the public prosecutor's office to exercise general control over legality. The public prosecutor shall also set forth his or her standpoint on the conducted proceedings. After having heard the standpoints of the parties and considered that the dispute is made clear from legal and actual point of view, the Court shall pronounce its decision. The legally established term for such pronouncement shall be one month.

By its decision the Court may reject the complaint and leave the Commission's decision in force, may honour the complaint and repeal in full or in part the decision pronounced or may repeal the decision and return the correspondence with indicated compulsory instructions on new consideration by the specific panel of the Commission. If the Court considers that the proceedings before the Commission have been conducted in

conformity with the law and are that all aspects of the dispute have been made clear, the Court shall repeal the complaint as ungrounded. Should the Court establish violation of the rules of proceedings or non-clarification of the circumstances and/or non-discussion of collected evidences, which are of significant importance for that dispute, as well as constitution of a non-due party to the administrative proceedings, the Supreme Administrative Court shall repeal the decision and return the correspondence for new consideration. The Court decision has to be justified. If a member of the judicial panel disagrees with the decision pronounced, such member shall sign it with dissenting opinion, which shall be also justified. The decisions of the three-member panel may be appealed before a five-member panel of the Supreme Administrative Court. The term for such appeal shall be fourteen days and shall start running as from the date of its notice to the parties. The decision of the three-member panel may be also appealed before a five-member panel and the Commission and in this case the Commission shall be constituted as complainant.

Before a five-member panel of the Supreme Administrative Court, an appeal of cassation shall be lodged and there, the arguments and requests to the Court shall be set forth. In this phase, the Court shall examine the appeal only on the base of the reasons for repeal specified there. Such reasons may be irregularity, groundlessness and lack of conformity with law of the first-instance decision. In the proceedings, a representative of the public prosecutor's office shall be also involved. The Court shall conduct the case along the same rules of proceedings, as before the first instance and shall pronounce its decision. Such decision shall be final and shall not be subject to appeal. It has the force of something adjudged and shall be compulsory executable. It shall enter into force on the date of its pronouncement.

The appeal of a Commission's decision pronouncing compulsory administrative measures, may be appealed before the Supreme Administrative Court, at which such appeal shall not stop implementation of the compulsory administrative measures, unless the Court specifies explicitly otherwise. The Court shall estimate if it shall stop implementation, case by case, taking into consideration the facts and circumstances about the case, as well as the nature of the measures imposed and the possible consequences for their addressee.

A full or partial agreement between the parties to the correspondence on the case approved by decision shall not be subject to appeal before the Supreme Administrative Court, because it shall enter into force on the date of its approval by the respective sitting panel.

SECTION FIVE

CONTROL OVER EXECUTION OF THE COMMISSION'S DECISIONS

1. Realization of control over the observance of decisions pronounced by the Commission

In cases of imposing of compulsory administrative measures – compulsory prescriptions.

Following the pronouncement of its decision, the Commission shall exercise control over its implementation. The Commission shall control the implementation of the agreements achieved and approved by the parties in the proceedings before the Commission, as well as the compulsory prescriptions imposed by decision.

Subject to control shall be the decisions, where violations have been established, and representing discrimination within the meaning of the PfDA. Such control is in essence a procedure starting after expiration of the specified term of implementation. Such term of implementation of compulsory prescriptions may not be longer than one month. If within that term the legally bound subjects notify the Commission of undertaken actions of implementation, they shall submit evidences in this respect and if the Commission has stated real implementation, the correspondence shall be brought to an end.

In cases when after expiration of the one-month term no implementation of the pronounced decision follows or there is no notification, the Commission shall undertake executive proceedings. Such executive proceedings shall start by letters of advice addressed to the persons, employers or governmental and local authorities who, according to the decision, shall execute the compulsory prescriptions. By such letter the Commission shall demand evidences of the actions undertaken for implementation or explanations of why such implementation has not started yet. The requested evidences of implementation or of starting actions for executing the compulsory prescriptions pronounced by the Commission are various and they depended on the specific contents of the compulsory prescription.

In some cases the implementation of the Commissions act would require the development and realization of short-term or medium-term measures or programmes. Sometimes the implementation would require the accomplishment of consecutive actions for a longer period of time. In cases of actions concerning implementation, which are characteristic for their specific consequence and need a specific term for realization, the Commission would accept that implementation of the pronounced compulsory prescriptions has started; if the bound party notifies that the first steps for implementation have been made. For example, such is the case of implementing decisions of the Commission to provide for access of people with disabilities to all social buildings, which are public and municipal property, granting the opportunity to people with specific needs to freely and without hindrance exercise their right of election when holding elections. In such cases the control over implementation would require longer period of time.

In case of non-implementation of pronounced compulsory administrative measures the Commission shall impose administrative punishments, namely – fines for physical persons and property sanctions – for juridical persons.

It should be underlined that if a Commission's decision ruling on compulsory administrative measures has been appealed before the Supreme Administrative Court and the Court has not ordered discontinuation of the implementation of such measures, the Commission shall have the power to exercise control over the implementation of the compulsory administrative measures imposed.

By the pronounced decisions the Commission may impose also administrative punishments - fines and property sanctions. The appeal of a decision by which they have been imposed, shall stop their compulsory implementation until final pronouncement by the Supreme Administrative Court. In the case of enforced decision, they shall be collected pursuant to the Tax-Insurance Procedure Code. The proceedings shall start by sending an invitation for voluntary implementation. If no payment follows, the entire correspondence shall be sent to the State Receivables Collection Agency, for compulsory collection of the receivables.

In cases of agreement

The Commission shall exercise control over the implementation of its pronounced decisions, by which the agreements achieved between the parties to the proceedings have been approved.

Given that an agreement has been achieved between the parties to the proceedings and they have observed the Commission's decision concerning its approval, it should be accepted that the decision pronounced by the relevant specialized sitting panel has been implemented. If later it is established that there are facts and circumstances making grounds to accept that there is non-observance of understandings under the agreement, actions shall be undertaken to restore control over the decision's implementation and sanctions may be imposed for non-implementation of the Commission' decision.

In cases of imposing fines and property sanctions

The files and property sanctions for enforced decisions of the Commission shall be collected pursuant to the Tax-Insurance Procedure Code. When imposing such sanctions, the property status of the violators and the actual and legal point of view of the established violation leading to discrimination shall be taken into consideration. If the decisions, by which such sanctions have been imposed, have been appealed and if they have not been met voluntarily, undertaking of measures to collect the imposed sanctions shall begin following the final decision of the Supreme Administrative Court on the relevant dispute.

In cases of recommendations made

In the course of some of the proceedings it may be established that the normative regulation or intradepartmental rules regulating the specific type of social relations need change with the view of prevention and discontinuance of discriminative practices. In such cases the Commission shall make suggestions and recommendations to governmental and municipal authorities to undertake actions and bring the normative regulation in compliance with the provisions of PfDA. In most cases such recommendations, even though of non-

compulsory nature, have been taken into consideration by their addressees in realizing their activity, including in view of avoiding of discriminative practices.

2. Other manners of control

The Commission shall keep track of the implementation of its acts also by carrying out spot inspections for findings. This manner of control shall cover meetings with the persons to whom sanctions or compulsory administrative measures have been imposed by specific decision. The purpose of such control shall be to establish the actual state. Inspection shall be made of what measures on implementation have been undertaken. The Commission's representatives, who carried out the check, shall draw up a protocol on the findings. The protocol shall be signed both by the Commission's employees, who carried out the inspection and the inspected persons. On the grounds of the established situation and following a report to the relevant sitting panel enacting the decision, the Commission shall decide if the actions undertaken can be accepted as sufficient and proving the implementation of the decision pronounced.

Such inspections shall be carried out in the territory of the entire country. In some cases, in spite of a formal non-observance of the terms specified for notification that implementation has either begun or is realized, no sanctions have been imposed after such statement. The Commission shall accept that the preventive and educative purpose of the sanctions or compulsory measures ordered by decision has been achieved. In other cases the inspection may establish entire non-implementation of the sanctions or compulsory administrative measures imposed. In result, the required evidence shall be collected and fine shall be imposed for non-implementation of the Commission's decision. When fixing its amount within the limits established by law, the property status of the violator and the seriousness of the violation shall be taken into consideration.

The control over the implementation realized by the Commission shall also have preventive action. It shall be expressed not as much in imposing of fines or property sanctions, as in the possibility that the relevant subject, who performed or who had created prerequisites for the accomplishment of actions, specified by the Commission as discrimination, to acquire bad popularity in society and most of all in the field, where such subject is realizing his or her activity. This shall mostly concern big employers, to whom the preventive and educative effect will be sooner achieved in thus way, then by property sanctions.

In the preventive nature of the control over implementation of the Commission's acts the main role shall be still plaid by the sender of a complaint or signal. In case such sender establishes that the things ordered by the Commission's decision are not being implemented, he or she may again approach the Commission in view of continuing the control over implementation of the decision pronounced.

ANNEXES:

Annex No 1

TO
THE CHAIR
OF THE COMMISSION FOR
PROTECTION FROM
DISCRIMINATION

COMPLAINT

By
(all three names of the complainant shall be put down)

Address: Town:....., Street No....., Telephone No.....

Subject: Discrimination on the ground of:.....

Against:.....
(the person, institution or their action resulting in discrimination shall be specified)

DEAR MISTER CHAIR,

Statement of the circumstances in free text follows.....

In view of the above statement, I would like to ask you, on the grounds of Article 50 of the Protection from Discrimination Act, to form proceedings and establish if there is discrimination according to the ground.....,
(the ground/criteria shall be specified)

to repeal decision/ order/ regulation or another act
(the name of the issuing authority shall be put down)

Issued by
(the name of the issuing authority shall be put down)

as well as to make recommendation on discontinuing the discriminative practice.

Enclosed are the following evidences:

- 1.....
- 2.....

ANNEXES : See the text.

Date:.....

Signature:

Note: *The evidences encloses shall be in principle in writing. The complainant may nominate witnesses, who are willing to deliver evidence in an open session. Then, in the place of the text: Enclosed are the following evidences:*

- 1.....
- 2.....

ANNEXES: See the text”
the following shall be put down:

„Please be so kind to summon the person,
(all three names and the address shall be put down)
and attract him or her as witness in view of clarification of the circumstances about this complaint”

TO
THE CHAIR
OF THE COMMISSION FOR
PROTECTION FROM
DISCRIMINATION

W A R N I N G

By
(all three names of the filing party shall be put down)

Address: Town:....., Street No....., Telephone No.....

Subject: Discrimination on the ground of:.....

Against:.....
(the person, institution or their action resulting in discrimination shall be specified)

DEAR MISTER CHAIR,

Statement of the circumstances in free text follows.....

In view of the above statement, I would like to ask you, on the grounds of Article 50 of the Protection from Discrimination Act, to form proceedings and establish if there is discrimination according to the ground.....,
(the ground/grounds shall be specified)

To enact discontinuance of the violation until a situation of equal treatment is established, as well as to impose the sanctions or compulsory administrative measures provided by law.

Enclosed are the following evidences:

- 1.....
- 2.....

ANNEXES : See the text.

Date:.....

Signature

Note: *The evidences encloses shall be in principle in writing. The signal filing party may nominate witnesses, who are willing to deliver evidence in an open session. Then, in the place of the text: Enclosed are the following evidences:*

- 1.....
- 2.....

ANNEXES: See the text
the following shall be put down:

„Please be so kind to summon the person,
(all three names and the address shall be put down)
and attract him or her as witness in view of clarification of the circumstances about this
signal”

DECLARATION

Pursuant to Article 6, paragraph 2, point 2 of the Rules of Proceedings before the Commission for Protection against Discrimination

I, the undersigned
....., ID No.
....., holder of identity card No
Issued on..... by, in my capacity
of complainant/proxy of
(Please delete where inappropriate)
..... before the Commission for
Protection against Discrimination, I DECLARE that:

By the time of lodging this complaint/ this signal there is no case instituted or pending proceedings on the same dispute and/or based on the same legal reason between the same parties, before the Court.

I have been notified that for false data delivered by this declaration, I shall bear liability pursuant to Article 313 of the Penal Code.

Date:

DECLARER:
(name and signature)

TO

Dear Sir/Madame,

In connection with correspondence No/2008 in the Commission's inventory on complaint, incoming No lodged by, we herewith inform you that the preliminary investigation has been finished within the terms set in Article 59, Para. 1 of the Protection from Discrimination Act (PfDA) and Article 22, para.1 and Para. 2 of the Rules of Proceedings before the Commission for Protection against Discrimination (RPCPD).

On the grounds of Article 59, Para. 3 PfDA and Article 25 RPCPD, being party to the proceedings, you have the right to get familiarized with the materials collected in connection with the above correspondence at the address of the Commission for Protection against Discrimination – city of Sofia, 35 Dragan Tzankov Blvd., in the time from 09.30 to 12.30 and from 13.00 to 17.00 o'clock. You also have the right to specify new evidences until holding the first session, as well as during the first session itself.

You can realize your right to get familiarized with the materials in connection with the correspondence against presenting this letter within 10 days as from the date of its reception. You shall be entitled o make copies of the materials collected.

On the grounds of Article 58, para.1 in conjunction with Article 70, para.1 of the Protection from Discrimination Act and in conjunction with Article 38 of the Administrative Procedure Code we would like to warn you that the documents collected and the information obtained shall be used only for the purposes of investigation and in this connection the parties to the proceedings have the right that their secrets, including secrets about their private life, business and occupational secrets shall not be disseminated until termination of the proceedings before the Commission.

.....
/....., Rapporteur on correspondence No/

TO

NOTICE OF SUMMONS

COMMISSION FOR PROTECTION AGAINST DISCRIMINATION,
SPECIALIZED SITTING PANEL.....

Invite you to appear to a session in public in your capacity of in connection with correspondence No....., pursuant to Article 60, Para. 2 PfDA and Article 56 of the Civil Code of Procedure. The open session for consideration of correspondence No..... **has been scheduled to at o'clock and shall be held in the city of Sofia, 35 Dragan Tzankov Blvd, at the administrative building of the Commission for Protection against Discrimination.**

Please be so kind to appear in person in your capacity of in connection with correspondenceNo or to duly empower a proxy – a lawyer or representative pursuant to Article 32 of the Civil Procedure Code, who shall represent you during the session. According to Article 18, Para. 2 of the Administrative Procedure Code, for proceedings before the Commission you may be also represented by another citizen or organization holding a power of attorney in writing, with notarized signature.

By finishing the first session on the correspondence at the latest, you have the right to specify supplementary evidences, which you will to be collected in the proceedings, to bring witnesses, to state all your requests and objections, as well as to deliver your opinion on the standpoint of the other party.

At the first session at the latest you may declare your desire to reconcile and in the case of reconciliation, to submit an agreement in writing.

According to the provisions of Article 60, Para. 2 PfDA, in conjunction with Article 56, Para. 2 of the Civil Procedure Code, the Commission shall summon the parties only to the first session in connection with the correspondence and to any subsequent session, if any of the parties has not been regularly summoned or if the consideration of the correspondence has been postponed in a closed session. The parties, who have been regularly summoned, if consideration of the correspondence has been postponed, shall not be summoned to the subsequent session, if its date has been declared at the session.

.....
/....., rapporteur on correspondence No
...../

**“How shall we initiate proceedings before the Commission for Protection against
Discrimination?”**

Manual for non-jurists

Authors: A team from the Commission for Protection against Discrimination composed of:

Elka Yordanova Bozhova
Maria Borisova Dimitrova-Turner
Sevnur Nezhdet Mehmed
Sofia Angelova Desislavova

Publication of the Commission for Protection against Discrimination

Editors:
Aneli Chobanova
Ass.Prof. Irina Muleshkova

First edition
2008

Commission for Protection against Discrimination
All rights reserved.

None of the material in this publication may be reproduced and stored in any data storage system or transmitted, inclusive broadcasted, either in part or in full applying any method, inclusive photocopy, electronic, mechanic, recording or other means without the prior written permission of the publisher.

This publication is disseminated free of charge.

Commission for Protection against Discrimination
1125 Sofia, 35 Dragan Tzankov Blvd.
Tel. (02) 807 3030
Fax (02) 870 6446
e-mail: kzd@kzd.bg
www.kzd-nondiscrimination.com

THE WORLD IS FOR EVERYONE!



Commission for protection against discrimination

bld. "Dragan Tzankov" N 35, 1125 Sofia, Bulgaria, phone: +359 2 807 30 30, fax: +359 2 870 84 48
email: kzd@kzd.bg, <http://www.kzd-nondiscrimination.com>