



المؤتمر الدولي: "قانون العقوبات والتدابير البديلة:
تجربة نوعية في التشريع الجنائي"

International Conference: "Alternative Sanctions and Measures
Law: Qualitative Experience in Criminal Legislation."

2022 سبتمبر 27-28 Sep. 2022

المؤسسة الوطنية لحقوق الإنسان
National Institution for Human Rights

Kingdom of Bahrain - مملكة البحرين



Working Paper

"Legal and extralegal remedies to counteract discrimination"

The International Conference: "Alternative Sanctions and Measures Law: Qualitative Experience in Criminal Legislation"

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Republic of Bulgaria

27 - 28 September 2022

Manama - Kingdome of Bahrain

LEGAL AND EXTRALEGAL REMEDIES TO COUNTERACT DISCRIMINATION

The Commission for Protection against Discrimination is an independent specialized state body for prevention, control and protection against discrimination, ensuring equality of opportunity, with significant powers in this direction, established in Art. 47 of the Law on Protection from Discrimination. It is a specialized body for equality within the meaning of the anti-discrimination law of the European Union.

It was established and operates in accordance with the Paris Principles (Resolution 1992/54 of the Commission on Human Rights, UN) and Recommendation No. 2 of the European Commission against Racism and Intolerance (ECRI) to the Council of Europe. According to European directives, member states must delegate sufficient powers to their equality bodies so that they can provide independent assistance to victims of discrimination in investigating their discrimination complaints, conduct independent inquiries into discrimination, publish independent reports and make recommendations on all issues related to discrimination.

All citizens on the territory of the Republic of Bulgaria have the right to submit complaints, signal and inquiries to the equality body.



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The commission consists of 9 members, of which at least four are lawyers. The National Assembly elects 5 of the members, including the Chair and Deputy Chair of the Commission, and the President of the Republic of Bulgaria appoints 4 of the Commission's members. The mandate of the Commission members is 5 years. The principles of balanced participation of women and men and participation of persons belonging to ethnic minorities is to be observed in when appointing the members. When issuing a decision of the Commission, each of the members of the relevant composition has the right to form his own opinion about the reasons for the decision and, in case of disagreement, he has the right to express his special opinion in writing, which is an integral part of the decision.

In accordance with Art. 48 of Law on Protection against Discrimination the members of the Commission are divided into five specialized permanent sitting panels when observing the initiated files according to specific characteristics indicated by the complainant. In cases of complaints of unequal treatment on more than one ground, the files are allocated for consideration by five-member extended sitting panels on intersectional discrimination, appointed by an order of the Chair of the Commission. The respective compositions are specialized to consider certain ground.

In accordance with Article. 14, paragraph 4 of Chapter Three of the Rules on Proceedings before the Commission for Protection from Discrimination, the Chair of the Commission may, if necessary, create Ad hoc sitting panels.

When initiating a proceeding for protection against discrimination, two phases of the proceeding are considered - the investigation phase and the open hearings phase. The investigation phase starts from the moment when the reporter initiates clarification of the factual situation of the respective case. In these actions, the main approach to the study is adherence to the facts and circumstances set forth in the initiative document, according to which the reporter's actions are formed. Distinctive and admissible for any administrative proceeding is the so-called "official beginning", when for the needs of the complete and comprehensive clarification of the circumstances of the file and for the disclosure of the objective truth, it is necessary to perform other actions towards other persons, not mentioned and not requested by the author of the initiative document. In this aspect, the provisions of Article 55 and Article 56 of the Law on Protection against Discrimination.

The Commission has the authority to control the implementation of the Law on Protection against Discrimination by establishing violations, imposing administrative sanctions (fines) and compulsory administrative measures to prevent and stop discrimination, and restore the initial situation. The Commission also issues mandatory regulations for compliance with the law. The Commission appeals discriminatory administrative acts in Court, files and joins civil lawsuits for discrimination. The Commission can make



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recommendations to public bodies to stop their discriminatory actions and to cancel their acts. The Commission gives opinions on draft legal acts and makes recommendations for the adoption, amendment and repeal of legal acts. The Commission provides independent assistance to victims of discrimination, conducts independent studies and publishes independent reports, informs the public through the media about the current regulations in the field of protection against discrimination (Article 47).

In order to prevent discrimination, the Commission implements preventive activities - various initiatives, projects, meetings with citizens, open receptions.

The preventive function is one of the main functions of the Commission, it is implemented through a built partnership between the Commission and organizations from the non-government sector, which contributes to increasing the trust of representatives of vulnerable groups towards the institution and reporting cases of discrimination, by filing complaints and reports.

An example of the good practice of the Commission is the implementation project "Combating discrimination on the labor market", during which trainings were held for employers, in partnership with these organizations. Internal rules for non-discrimination at the workplace were drafted and companies that implement policies related to representatives from vulnerable groups in their organizations, people of different ethnicities and people with disabilities, applying the principle of diversity, providing equal pay for equal work to women and men were granted with certification by the Commission.

Another part of prevention is realized with the help of regional representatives of the Commission. They are located in 24 of the 28 regions, which makes the Commission for Protection against Discrimination unique in Europe. Their commitment is, in addition to providing independent assistance to citizens, to advise and inform them about the application of the anti-discrimination law, about the powers and rules of proceedings of the Commission, about the legal options for protecting the violated right to equal treatment, including for their procedural rights in the proceedings before the Commission. They participate in seminars, trainings with the aim of familiarizing themselves with the specifics of the Law on Protection against Discrimination. In this way, they assist and support the common will for tolerance and equality between different groups of people.

The provision of independent consultations and the provision of methodical assistance to citizens is carried out both in the central office of the CPD and through the regional offices. Including when citizens wish to initiate a of proceedings before the Commission, the employees inform them of the mandatory details of the complaint or signal. Citizens on the territory of the country have the opportunity to be informed and consulted in places through the so-called open receptions. This form of activity in the municipalities is an essential part of the independent assistance provided to victims of discrimination,



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especially when they live in remote areas of a district, when they are disabled or representatives of other vulnerable groups.

The Commission for protection against discrimination as an administrative body has the competence to establish discrimination, but only in cases where it is not a crime, for the detection and establishment of crimes, a criminal prosecution must be initiated. According to Bulgarian legislation, simultaneous application of criminal and administrative liability for the same act is not permissible. In connection with Article 59, paragraph 4 of the Law on Protection from Discrimination and Article 33 of Law on Administrative Violations and Penalties, the Commission can rule on acts with a lower degree of public danger and constituting administrative violations.

It should be noted that according to national legislation, the sanctioning of acts related to hate crimes and hate speech is carried out under criminal and administrative procedures.

The purpose of the Criminal Code is to protect the personality and rights of citizens and the overall legal order established in the country from criminal encroachments. For this reason, the code defines which socially dangerous acts are crimes and what punishments are imposed for them, and establishes the cases when, instead of punishment, social impact and education measures can be imposed.

The provision of Article 162, paragraph 1 of the Criminal Code, section I "Crimes against the equality of citizens", provides that whoever through speech, print or other means of mass information, through electronic information systems or in any other way preaches or incites discrimination, violence or hatred based on race, nationality or ethnicity, shall be punished by imprisonment of one to four years and a fine of five thousand to ten thousand BGN, as well as public censure.

Prejudice crimes are intentional acts that seriously damage public relations and are committed with a specific motive related to prejudice against certain features of the victim. These crimes are also known as "hate crimes" and many of them really are. Hate may be related to the race, ethnicity, religion, gender, sexual orientation, disability or other similar characteristic of the victim.

Such are, for example, the killing or bodily harm of a person because of his/her ethnicity, where the perpetrator takes out on the victim his hatred of persons of the same ethnic group as the victim.

The perpetrator sees in the victim not so much a specific person, but a representative of the hated ethnic group. Physical violence against the victim because of his race or ethnicity is a typical hate crime, but so can a variety of other assaults - damage to property, rape, imprisonment, coercion, theft, fraud, etc. They can be directed both at the victim because of his race or ethnicity, and at a person related to the victim - a relative or simply a person who supports him.



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Although the effective enforcement of provisions criminalizing hate speech depends on having a reliable system of criminal sanctions against individuals who engage in such speech, this must be complemented by action to ensure that illegal speech on the Internet, which incites hatred, shall be dealt with immediately by online intermediaries and social media platforms upon receipt of a valid notification within an appropriate period of time.

One of the international organizations that is most actively involved in gathering information and assisting countries to combat hate crimes is the Organization for Security and Co-operation in Europe (OSCE).

The Commission is a national contact point for hate crimes for the Organization for Security and Cooperation in Europe. The Commission collects hate crime data every year. We summarize and report the information to the Organization for Security and Cooperation in Europe.

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