Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Bulgaria

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Discrimination on the grounds of sexual orientation is now banned in principle in every part of the social sphere in Bulgaria. However, pre-existing legislation has not been made consistent with this universal ban. The Protection Against Discrimination Act (PADA) (*Закон за защита от дискриминация, ЗЗДискр.)*[1] is a single equality act transposing all EC equality directives, including the Employment Equality Directive (2000/78/EC). It bans discrimination uniformly on any ground mentioned under international law or domestic legislation, explicitly including sexual orientation.[2] In a number of respects, the PADA goes beyond the provisions of the EC equality acquis, including Employment Equality Directive 2000/78/EC. Both its personal and its material scopes are universal. The PADA is explicitly applicable to the exercise of any right recognised by law, similarly to Protocol No.12 to the European Convention on Human Rights (ECHR).[3] Forms of discrimination explicitly banned as such and defined include inter alia direct and indirect discrimination; harassment; incitement to discrimination; and victimisation.[4] On the negative side, the definition of victimisation is not entirely compatible with that under the EC acquis, including Directive 2000/78/EC, as it requires a comparator.[5] With a change in the PADA from 2012, though, the requirement the person who incites to discrimination to be in a position to influence their audience has been dropped, making the definition fully compatible with the Directive.[6]

The PADA also features specific illustrative prohibitions of typical discriminatory conduct in key fields, including employment, education, membership of professional organisation and the provision of goods and services.[7] As with the general provisions, these particular bans are uniformly applicable to all protected grounds, including sexual orientation.

The PADA established a specialised single equality authority, the Protection Against Discrimination Commission (PADC) (*Комисия за защита от дискриминация, КЗД*), with a mandate to provide protection on all grounds uniformly, including sexual orientation. The PADC is an independent collegiate body consisting of nine members, five of whom are elected by Parliament, the others

[1]- Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223. All hyperlinks were accessed on 27 February 2014.

[2] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 4, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

[3] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 6: "The prohibition of discrimination in the exercise and protection of the rights and freedoms provided for in the Constitution and legislation of the Republic of Bulgaria applies to all persons"., Available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

[4] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 4 and 5, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

[5] 'Less favourable treatment' language is contained in the provision, rather than the neutral 'adverse consequence or reaction' of the Directives. While the wording of the domestic provision does not specify a comparator, leaving thus a broad scope for liberal construction, including of a hypothetical comparison with the person her/himself as s/he would have been treated were it not for the action against discrimination (perceived to have been) taken, it still compounds the test for proving victimisation by adding one additional element that is not there in the wording of the Directives. Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 12 to 39, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

[6] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Additional Provisions, § 5 (adopted on 31 July 2012), available in Bulgarian at:
http://lex.bg/laws/ldoc/2135472223.

[7] Bulgaria, Protection Against Discrimination Act *(Закон за защита от дискриминация*) (1 January 2004), Art. 12 to 39, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

appointed by the President. Their term of office is five years and their powers include: receiving and investigating complaints by victims, as well as third parties without limitation; issuing binding rulings declaring discrimination and imposing financial sanctions; issuing binding instructions to prevent, stop or require abstention from discrimination and/ or restore the status quo ante; carrying out surveys and publishing independent reports; bringing court action and joining court proceedings in an *amicus curiae* capacity; making recommendations to other authorities to reform legislation or practice; giving opinions on draft legislation; and providing independent assistance to victims of discrimination. As of 2012 among the powers of the PADC a duty to inform the public through the media about anti-discrimination legislation and other competencies was added.[8]

NGOs and trade unions have broad standing to engage in anti-discrimination proceedings before both the equality body, the PADC, and the courts. There used to be one lesbian, gay, bisexual and transgender (LGBT) NGO which had the resources to do so: the Bulgarian Gay Organisation "Gemini" (BGO Gemini) (*Българска гей организация „Джемини", БГО „Джемини"*), which, however, is not active as of February 2009. Although at the moment there are several other NGOs working on LGBT rights, such as the Bilitis Resource Centre Foundation (*Фондация „Ресурсен център – Билитис"*),[9] Youth LGBT Organisation "Deystvie" (*Младежка ЛГБТ организация „Действие"*)[10] and LGBT Plovdiv (*ЛГБТ Пловдив*)[11] and Sofia Pride Foundation (*Фондация „София Прайд"*),[12] none of them have initiated discrimination lawsuits on their own behalf due to the lack of the necessary expertise and resources.

Over the period 2004 – 2008 LGBT NGOs have brought two court cases of sexual orientation discrimination, as well as three cases before the PADC. One of the court cases and one of the PADC cases were filed by NGOs on their own behalf. The PADC had not initiated any ex officio proceedings. During 2008 and 2009 nine cases were initiated by individuals before the PADC and four decisions were issued as of February 2010.[13] Three of them are for seizure of the proceedings as the complainants did not respond to the PADC's requests for exact information about the time and place of the discriminative act and the potential discriminator.

One interesting case was that of a private company selling plane tickets which, after the intervention of an LGBT NGO and the media, changed its discriminatory policy towards gay couples who were initially deprived of the right to benefit from a promotion.

In the period 2010 – 2013 there have been 15 new sexual orientation discrimination cases, decided by the PADC, several of which were subsequently reviewed by courts. No cases initiated before a court were identified. Nine of them concerned homophobic speech, three – personal insults; one case concerned ban on blood donation by homosexual people; and one case concerning the banning of public demonstration and expression of sexual orientation. In 2012 the first case of discrimination in the sphere of employment was decided by the Protection Against Discrimination Commission in an application, concerning loss of job as a national coach and ban from taking part in competitions after the applicant

[8] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 47, para. 12, (adopted on 1 August 2012), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[9] Bulgaria, Bilitis Resource Centre Foundation (*Фондация „Ресурсен център – Билитис"*), official website: http://www.bilitis.org/.
[10] Bulgaria, Youth LGBT Organisation "Deystvie" (*Младежка ЛГБТ организация „Действие"*), official website: http://www.deystvie.org/.
[11] Bulgaria, LGBT Plovdiv (*ЛГБТ Пловдив*), official website: https://www.facebook.com/lgbt.plovdiv.
[12] Bulgaria, Sofia Pride Foundation (*Фондация „София прайд"*), official website: https://www.facebook.com/sofiapride.
[13] This information was provided by the PADC upon a request by the researcher. The decisions do not contain any details about the discriminative act.

took part in a Mr. Gay competition.

Freedom of movement

Domestic legislation on foreigners does recognise family grounds as eligible for granting and permitting residence in Bulgaria. Requirements for family members of nationals are in general more favourable in comparison to those for alien couples. Since EU accession on 1 January 2007, citizens of the European Union are no longer considered foreigners under national legislation and the rights to family reunification benefiting nationals were extended to EU citizens.

As of 1 January 2007 specific legislation[14] regulates the residence requirements for EU citizens and their spouses. . Furthermore, as of 2012 the definition of a family member was amended to include explicitly the descendants and the ascendant of the current cohabitant of an EU citizen. Thus, the concept of 'family member' granted a derived right to family reunification was extended as regards all citizens of the European Union, as well as nationals of Iceland, Liechtenstein, Norway and Switzerland, to include: 1. the spouse or currently cohabiting partner of the citizen of the European Union; 2. descendants of a citizen of the European Union under 21 years of age or are still dependent on him/ her, including the direct descendants of the spouse/ cohabitant; 3. ascendants who are maintained by the citizen of the European Union or by his/her spouse/ cohabitant.[15]
The legal definitions in the Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*) do not specify the gender of the person entitled to the rights. Thus, the Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act does not explicitly exclude LGBT family members from the right to enjoy the residence privileges of their spouses or cohabitants who are EU citizens. In practice, the researchers did not find registered cases of either the granting or the refusal of visas and/ or residence permits LGBT spouses or cohabitants.

LGBT third country nationals who are spouses of EU citizens are entitled in principle to exercise their rights of freedom of movement and to reside within the territory of the Member States. As yet, however, there have been no known examples of this right being exercised in Bulgaria. Under the understanding Bulgarian courts have of international public policy same-sex marriage will not be a valid reason for family reunification in Bulgaria. An interviewed LGBT activist[16] reported about a case in which the Bulgarian municipal authorities rejected to register the same-sex marriage between a Spanish and a Bulgarian woman but to the best knowledge of the reporter, a court case has never been initiated.

The reporter as an experienced human rights NGO participated in discussions among judges, NGO representatives and legislative bodies for the new draft of amendments to the Family Code and legislation regarding foreigners in Bulgaria in 2006 and 2007. Then its observations were that same-sex marriages would not be interpreted in a way allowing benefiting from regulations concerning family

[14] Bulgaria, Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*) (1 January 2007), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135535758.
[15] Bulgaria, Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*) (1 January 2007), Additional provisions, Art. 1, para. 1, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135535758.
[16] Interview on 9 February 2010 with Axinia Gencheva, former executive director of BGO Gemini, currently consultant to the new LGBT NGO Bilitis.

reunification. Indeed, the newly adopted in October 2009 Family Code (*Семеен кодекс*) does not recognise same-sex couples' rights.

For the 2010 – 2014 period no new substantive legal development regarding LGBT people's freedom of movement was found. No case law was found for the reporting period.

Asylum and subsidiary protection

As of May 2010 there was only one case known to the reporter of an asylum seeker basing his application for refugee status on the grounds of persecution of a group based on a common characteristic of sexual orientation and seeking to be considered a victim of persecution 'for reasons of membership of a particular social group' for the purpose of obtaining refugee status. The application was rejected solely because the allegations made were considered to lack credibility.

According to § 1 (3) of the Additional Provisions of the Asylum and Refugees Act (*Закон за убежището и бежанците*) "members of the family" are: a) the spouse or the person with whom s/he is in a proven stable and long-term relationship and their non-married children under the age of 18; and b) those non-married children above the age of 18 that cannot provide for themselves due to serious health issues; and c) the parents of both spouses, who are unable to provide for themselves due to their age or serious health condition. This Act refers only to foreigners who are not citizens of any EU country, Switzerland or EEA countries and who are not stateless.[17] Thus, the law does not recognise specifically LGBT partners as family members for the purpose of obtaining derivative status – refugee status or a subsidiary form of protection, i.e. humanitarian status. The research did not find any statistics on this. There were no new developments with regard to asylum and subsidiary protection of LGBT persons in Bulgaria during the period 2007 – 2009.

In October 2010 as part of the "Fleeing Homophobia" Project commissioned by COC Netherlands and VU University of Amsterdam, the Bulgarian Helsinki Committee made a research about LGBT asylum seekers in the country and prepared a national report.[18] The Report found that in general, the overwhelming attitude of suspiciousness and mistrust of the decision-maker in Bulgaria makes it hard to prove most of the refugee stories that asylum seekers share in order to substantiate their recognition and protection. Furthermore, the Report found that in many cases LGBTI asylum seekers were obliged to go to a sexologist for medical check and issue of a certificate, that the applicant is actually homosexual.

A number of new legal cases, concerning LGBT asylum seekers were identified in the period 2010 – 2013. In general, it can be said that in order an application on the basis of sexual orientation for asylum to be successfully recognised by the authorities, a proof that an actual persecution made by the authorities in the country of origin, must be shown.

[17] Bulgaria, Asylum and Refugees Act (*Закон за убежището и бежанците*) (1 December 2002), Additional provisions, § 1 (1) (adopted on 29 June 2007), available in Bulgarian at: http://lex.bg/laws/ldoc/2135453184.

[18] Bulgaria, Bulgarian Helsinki Committee (2010), National report prepared by the researcher Dessislava Petrova for the Fleeing Homophobia, Seeking Safety in Europe research project (unpublished). The collective report of the project is available at: http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN_tcm22-232205.pdf.

Family reunification

Article 34, paragraph 1 of the Asylum and Refugees Act (*Закон за убежището и бежанците*)[19] entitles the refugee or the person recognised as deserving a form of subsidiary protection the right to claim family reunification in Bulgaria granted by the asylum authority, the State Agency for the Refugees (*Държавна агенция за бежанците*). Paragraph 1(3) of the Additional Provisions of the same act defines as a family member "[…] the spouse or the person with whom s/he is in a proven stable and long-term relationship and their minor and non-married children". However, paragraph 5 of the same article requires the family reunification applicant to provide official documents evidencing the matrimonial state or the relationship. Nevertheless, if the applicant for family reunification cannot present official documents proving the matrimonial state or the relationship, she or he may provide evidence about the links to the joining family members through a written declaration or in another way. This seems to open up the possibility for cohabiting same-sex partners to benefit from family reunification. However, no cases are known to the reporter of reunification being requested for LGBT partners. The reporter (the Bulgarian Helsinki Committee, the only non-governmental human rights organisation established in 1992 to protect the rights of refugees and migrants) and state authorities in charge of granting the legal status of asylum have been working closely together since 1999. Based on the experience from this working relationship, the reporter can state that official statistics are not kept and no such cases have been recorded. There are no new developments with regard to family reunification of LGBT persons in Bulgaria during the period 2007-2009.

An official inquiry for information about cases of applications for family reunification by LGBT people was sent to the State Agency for Refugees in December 2013. According to the Agency there are only few such cases and this is why no official statistics is being recorded.[20]

No court cases for the 2010 – 2013 period concerning family reunification of LGBT people were identified.

Freedom of assembly

Freedom of assembly is recognised as a basic citizen's right in the Bulgarian Constitution of 1992. The Assemblies, Meetings and Marches Act (AMMA) (*Закон за събранията, митингите и манифестациите, ЗСММ*)[21] provides for a notification regime for public assemblies in Bulgaria. It is interpreted and applied in a rather incoherent way by the municipal authorities and the national courts. When adopted the notification procedure required prior notification to be submitted to the municipal authorities 48 hours before meetings (rallies) and five days before marches. Within 24 hours of being notified the mayor might be able to ban the event or propose a different timing and/or place. Otherwise, the event was allowed to be held according to the notification. The bans might have been appealed before the regional courts, which were obliged to decide the case within a 24-hour time limit. The court decision could not be subject to further appeal. This law was amended in January 2010. The new provisions were that the prior notification of an event must be done 72 hours before the event and that assemblies, meetings and marches are banned to take place right in front of the Parliament, Presidency, Council of Ministers' buildings and around military zones. If the mayor does not allow the public event

[19] Bulgaria, Asylum and Refugees Act (*Закон за убежището и бежанците*) (1 December 2002), Article 34, para.1 (adopted on 29 June 2007), available in Bulgarian at: http://lex.bg/laws/ldoc/2135453184.

[20] Bulgaria, State Agency for Refugees with the Council of Ministers (*Държавна агенция за бежанците при Министерски съвет*) (2013), Letter № 02-3116/21 December 2013, signed by Mr. Nikolay Chirpanliev, Head of the Agency.

[21] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.

within three-day period the organisers of the event might appeal the ban before the administrative court. The latter must decide within 24 hours. The law did not enter into force as the trade unions asked the President to veto it and he did that on 1 February 2010. The main proposals of the President concerned the exact parameters of the zones in front of the buildings where public events are banned and the reduction of the time-period for prior notification from 72 to 48 hours. Eventually, the law was changed to require a 72-hour prior notification (48-hour in urgent cases) for manifestations,[22] while the already existing 48-hour prior notification (24-hour notification in cases when it is impossible the regular notification period to be met) for meetings and rallies, was kept intact.[23] Furthermore, a ban on manifestations in a security area between 5 and twelve metres around the buildings of the Parliament, the Presidency, the Council of Ministers and military zones was introduced.[24]

LGBT events used to happen rarely – only on 17 May every year since 2004. The municipal authorities and the police usually cooperated with the organisers of these events. However, the researchersd found one case where a mayor banned the opening of an information centre for several days in the centre of the city of Varna in 2005. BGO Gemini filed a complaint against the ban before the PADC. The Commission found indirect discrimination in the case and a €250 fine was imposed on the Varna municipality.[25] The Commission's reasoning for why this was indirect discrimination was that the municipality's decision to ban the event resulted in 'a discriminatory practice by implementing a seemingly neutral provision'. The mayor appealed the Commission's decision before the Supreme Administrative Court (*Върховен административен съд*).[26] The first instance three-member jury confirmed the Commission's decision. However, the second instance five-member jury revoked the decision, finding that there was no indirect discrimination.[27] The court returned the case to the Commission on 16 November 2007. With a second decision the PADC found that the actions of the Varna Municipality constituted indirect discrimination and again imposed a fine of 500 BGN (€ 255).[28] This decision was appealed by the municipal authorities before the Supreme Administrative Court. On 22 July 2008 a three-member jury revoked the decision of the PADC,[29] but, eventually, after an appeal of the Commission, a five-member jury confirmed that there the actions of the Municipality was discriminatory.[30]

In June 2008 and 2009 two LGBT parades took place in Sofia. Around 150 and 250 LGBT people respectively for 2008 and 2009 participated in each of them. They were protected by heavy armed police guards for some of which the LGBT organisations paid.[31] More than eighty neo-Nazi persons were detained after each of these parades for attacking or offending the participants.

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[22] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*), (2 February 1990), Art. 11(adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.

[23] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), Art. 8, (adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.

[24] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), Art. 7, para. 2 and 3 (adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.

[25] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 46/2006, 17 October 2006.

[26] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision № 4752/2007, case file № 11478/2006, 15 May 2007.

[27] Bulgaria, Supreme Administrative Court, five-member jury (*Върховен административен съд, пет-членен състав*), Decision № 11295/2007, case file № 6407/2006, 16 November 2007.

[28] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 50/2008, case file № 17/2006, 24 March 2008.

[29] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision № 8915/2008, case file № 5355/2008, 22 July 2008.

[30] Bulgaria, Supreme Administrative Court, five-member jury (*Върховен административен съд, пет-членен състав*), Decision № 2807/2009, case file № 14722/2008, 4 March 2009.

[31] Interview on 9 February 2010 with Axinia Gencheva, former executive director of BGO Gemini, currently consultant to the new LGBT NGO Bilitis.

In the period 2010 – 2013 LGBT activists continued to organise the annual Sofia Pride marches with an increasing number of participants with the exception of the 2013 Sofia Pride. A number of accidents were reported during and after the 2010, 2011 and 2012 pride marches, with the 2013 edition being the first march without any reported incidents.

Since 2011 another event began to be organised annually on the occasion of the International Day against Homo-,Bi- and Transphobia (IDAHO) – 17 May. Furthermore, for the first time in recent years events, concerning LGBTI rights were organised outside the capital Sofia.

Hate speech and criminal law

The Bulgarian Criminal Code (*Наказателен кодекс*) provides for sanctioning of hate speech but only on two grounds – race and religion. These provisions are not enforced.[32] The Criminal Code does not envisage punishment for homophobic hate speech because it does not in itself constitute a crime. The research therefore did not find any case of such hate speech being subject to criminal prosecution. It is possible to sanction homophobic hate speech within the framework of the system of 'administrative punishments' under the PADC and there was only one such case pending before the courts now as of 2005.[33]

The cases of violence motivated by homophobic prejudices are rarely reported to the authorities and are very seldom reported to NGOs because of societal stigma and fear of the victims. In 2006 there were several cases of organised violence against individual victims.[34] In many of the cases in 2006 the perpetrators used the internet to identify the victim as LGBT and to organise themselves. The perpetrators pretend to be LGBT people in search of a partner.

The reaction of the authorities is usually inadequate. They do not accept or file the complaints or are reluctant to believe in the existence of a homophobic motive for the crime. The victims themselves are often unwilling to file complaints due to the societal stigmas they face. This results in the absence of any criminal proceedings against the perpetrators.[35] There were no developments regarding hate speech and criminal law during the period 2007-2009.

In the end of 2013 the Minister of Justice and Vice Prime Minister Ms Zinaida Zlatanova announced a draft of a new Criminal Code.[36] The definition of protected ground in the new draft law encompasses sexual orientation alongside with race, skin colour, national origin nationality, ethnicity, descent, religion, belief, health status, age or sex. Gender identity remains problematic and is not included as protected ground. The Bill was introduced to the Parliament on 31 January 2014.

The majority of the cases, dealing with sexual orientation discrimination, decided by the Protection Against Discrimination Commission (PADC) since 2010 concern homophobic speech. There is a

[32] Bulgaria, National Statistical Institute (*Национален статистически институт*) (2007), , *Crimes and persons convicted 2006* (*Престъпления и осъдени лица 2006*), Sofia, National Statistical Institute. .
[33] Bulgaria, Sofia District Court (*Софийски районен съд*), Axinia Guencheva v. Volen Siderov, case № 2014/06, 30 November 2006.
[34] Bulgaria, BGO Gemini The NGO is not active anymore.
[35] European Network Against Racism (ENAR) (2006), Shadow Report: Bulgaria 2006. Also available at: http://cms.horus.be/files/99935/MediaArchive/national/Bulgaria_2006.pdf.
[36] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.

growing jurisprudence of the Commission and the Supreme Administrative Court on such cases mainly because of the active involvement of two LGBT rights activists – Mr. Radoslav Stoyanov and Mr Dobromir Dobrev. Nine cases concerning homophobic speech in the 2010 – 2013 period were decided by the PADC.

A number of serious hate crimes against LGBT people have been identified, including the murder of Mihail Stotyanov – a 26-year old man who was brutally killed in 2008 in the Borissova Gradina (*Борисова градина*) park in Sofia. According to the Prosecutor's Office, the two suspects were part of a group which wanted to cleanse the park from gays. The investigation of the murder was extremely slow and the case was finally submitted before a court in 2013 after the case had been returned two times to the Prosecutor's Office.[37]

Transgender issues

Domestic anti-discrimination legislation (the PADA, see above) bans discrimination on sexual orientation grounds and equality of treatment between women and men is guaranteed under Bulgarian law. However, neither of these pieces of legislation make any mention of transgender people. A draft law for the amendment of the PADA has been submitted to the Parliament in 2013 by the Council of Ministers which envisages adding a new provision, according to which the "sex" protected ground would include sex changes cases.[38] The Bill was adopted by the Government on first reading on 16 January 2014. During the second reading of the Bill, however, it was rejected.
There are as yet no known legal cases brought under anti-discrimination legislation on behalf of transgender people and no case law to interpret the applicability of the legislation to them. Therefore, anti-discrimination law is unspecific concerning transgender people, still giving no indication whether discrimination against them is to be considered on sexual orientation grounds or on grounds of gender.

There is no legal definition of the concept of transsexuality in any Bulgarian law. Bulgarian legislation also lacks any regulations and procedures concerning the establishment of the status of a person who wishes to undergo sex reassignment surgery or hormonal treatment to that effect. The Bulgarian law does not prohibit hormonal treatment and surgery with the aim of sex reassignment. Gender and name alteration should be recognised by the court in two different procedures, which are not specifically provided for in the legislation. There are no new developments regarding legal regulations concerning transgender issues during the period 2007-2009.

In 2011 an important amendment to the Citizen Registration Act was adopted. Before that change the municipal authorities did not issue a new birth certificate after a court approval of a name and sex change but included the new information in a specific part of the Act called "Remarks" and thus, the information about the old sex remained visible in the official birth certificate. Since the introduction of Art. 81a in the Citizen and Registration Act on 20 May 2011, however, this was changed and at the moment, when a new birth certificate is being issued, the old one is nullified.[39]

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[37] Bulgaria, Bulgarian Helsinki Committee (*Български хелзинкски комитет*) (2013), 'Five years later the lawsuit for the murder of Mihail Stoyanov enters the court' *'(Пет години по-късно делото за убийството на Михаил Стоянов влиза в съдебна зала'),* Press release, 1 October 2013, available in Bulgarian at: http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-sled-5-godini-deloto-za-ubijstvoto-na-mihail-stoyanov-vleze-v-sdebna-zala/.

[38] Bulgaria, National Assembly (2013), Draft laws, Draft Law on Amendments and Supplements of the Protection Against Discrimination Act (*Законопроект за изменение и допълнение на Закон за защита от дискриминация*) submitted in the National Assembly on 25 November 2013, available at: http://parliament.bg/bills/42/302-01-46.pdf.

[39] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), Art. 81 a (adopted on 20 May 2011), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409.

In 2012 the Bilitis Resource Foundation (*„Фондация „Ресурсен център Билитис“)* commissioned a report[40] on the sex reassignment of trans and intersex people in Bulgaria. The report was prepared on the basis of 13 court decision for sex change from the 2000 – 2012 period, as well as on the basis of interviews with transgender people, attorneys-at-law and sexologists. According to the report there is a positive development in the jurisprudence since 2000, namely the fact that the decisions from the recent years "put the accent on the self-awareness and self-identification of the person, certified through a sexological and psychiatric expert reports", which have been found to be necessary for the court to consider a case for a sex and name change.

Miscellaneous

The way the prison administration collects and uses data on the sexual orientation of prisoners is unacceptable and humiliating. One reason is that this procedure is not clearly legally regulated.

Good practices

No good practices have been identified by the reporter.

[40] Bulgaria, Bilitis Resource Foundation (*„Фондация „Ресурсен център Билитис“*), Sex Change of Trans and Intersex People in Bulgaria (*Смяна на пола на транс и интерсексуални хора в България*), 2012, available in Bulgarian at: http://178.254.232.11:4801/dacyron/Strategy_Gender_Reassign_BG_Summary.pdf.

A. Implementation of Employment Directive 2000/78/EC

Bulgarian anti-discrimination legislation - the Protection Against Discrimination Act (PADA) (*Закон за защита от дискриминация*),[41] is a single equality act transposing all the EC equality directives, including 2000/78/EC. PADA leaves no gaps in the implementation of the Directives. Indeed, it goes well beyond their requirements. The PADA is explicitly applicable to the exercise of any legal right, similarly to Protocol No. 12 to the European Convention on Human Rights (ECHR).[42] Therefore, discrimination on sexual orientation grounds is banned in any area. Sexual orientation as a protected ground is expressly defined to include heterosexual, homosexual and bisexual orientation.[43] Multiple discrimination is specifically referred to.[44] The legislation applies uniformly to all areas of social life, including but not limited to education, public goods and services, etc.

Furthermore, incitement to discrimination, which encompasses an instruction to discriminate, used to be defined as direct and wilful encouragement by a person who is in a position to influence their audience – a more restrictive approach than that of the Directives, which ban any instruction to discriminate regardless of the intent, or standing of the perpetrator. With a change in the PADA from 2012, though, the requirement the person who incites to discrimination to be in a position to influence their audience has been dropped, making the definition fully compatible with the Directive. [45]

The PADA established a specialised single equality authority, the Protection Against Discrimination Commission (PADC) (*Комисия за защита от дискриминация, КЗД*), with a mandate to uniformly provide protection on all grounds, including sexual orientation. The PADC is an independent collegiate body consisting of nine members, five of whom are elected by Parliament, the others appointed by the President. Their term of office is five years and their powers include: receiving and investigating complaints by victims, as well as third parties without limitation; issuing binding rulings declaring discrimination and imposing financial sanctions; issuing binding instructions to prevent, stop or require abstention from discrimination and/ or restore the status quo ante; carrying out surveys and publishing independent reports; bringing court actions and joining court proceedings in an *amicus curiae* capacity; making recommendations to other authorities to reform legislation or practice; giving opinions on draft legislation; and providing independent assistance to victims of discrimination.[46] As of 2012 among the powers of the PADC a duty to inform the public through the media about anti-discrimination legislation and other competencies was added.[47] The PADC has quasi-investigative powers, including accessing any testimony, documents or facilities for on-site inspections, which allow it to be proactive in gathering

[41] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[42] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 6. "The prohibition of discrimination in the exercise and protection of the rights and freedoms provided for in the Constitution and legislation of the Republic of Bulgaria applies to all persons", available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[43] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Additional Provisions, § 1.10, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[44] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*), 1 January 2004), Additional Provision, § 1.11, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[45] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Additional Provision, § 5 (adopted on 31 July 2012), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[46] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 47, para. 1-11, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[47] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*)(1 January 2004), Art. 47, para. 12 (adopted on 31 July 2012), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

evidence, thus relieving the victim. Its proceedings are exempt from any fee or cost and can also be initiated ex officio. The equality body has initiated no *ex officio* proceedings in favour of LGBT people.

The PADA provides for concrete duties for certain key actors, such as employers, educators and service providers, in addition to their general duties implicit in the general bans on discrimination under the law. Thus, employers and educators are under specific obligation to prevent all forms of discrimination in the workplace or place of study, jointly with trade unions in the case of the former.[48] Under the PADA, NGOs and trade unions have broad standing to engage in anti-discrimination proceedings before both the equality body, the PADC, and the courts. Any party, including any NGO or trade union, has standing to initiate proceedings before the PADC in any case of discrimination, including on sexual orientation grounds.[49] There is no limit under the law on the number of parties who may jointly bring proceedings before the PADC, implicitly authorising collective proceedings. NGOs engaged in public interest activities have explicit standing under the PADA to represent victims, as well as to join proceedings as *amicus curiae* on their own behalf.[50] Furthermore, public interest NGOs and trade unions have express standing to bring *actio popularis* litigation on their own behalf where the rights of many parties are affected.[51] Undoubtedly, these standing possibilities under the PADA are of significant value in the fight against sexual orientation discrimination nationally. In practice, LGBT-specific NGOs have brought only two court cases on sexual orientation discrimination and three cases before the PADC. One of the court cases and one of the PADC cases were filed by NGOs on their own behalf as *actio popularis* litigants alleging the issues involved were of general importance.

While any NGO is legally authorised to engage in sexual orientation discrimination proceedings, on its own behalf as well as on behalf or in support of victims, there used to be only one lesbian, gay, bisexual and transgender (LGBT) NGO which had the resources to do so: the Bulgarian Gay Organisation "Gemini" (BGO Gemini) (*Българска гей организация „Джемини", БГО „Джемини"*), which, however, is not active as of February 2009. Although, at the moment, there are several other NGOs working on LGBT rights, such as the Bilitis Resource Centre Foundation (*Фондация „Ресурсен център – Билитис"*),[52] Youth LGBT Organisation "Deystvie" (*Младежка ЛГБТ организация „Действие"*)[53] and LGBT Plovdiv (*ЛГБТ Пловдив*)[54] and Sofia Pride Foundation (*Фондация „София Прайд"*)[55] none of them have initiated discrimination lawsuits on their own behalf due to the lack of the necessary expertise and resources. However, there are other human rights NGOs with a general anti-discrimination mandate which have the means, both institutionally and in terms of expertise, to bring litigation in sexual orientation discrimination cases and which have done so.

In 2007 the first case[56] of sexual orientation discrimination in the employment field was opened by the

[48] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 18, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[49] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 50, para. 3, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[50] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 71, para. 2, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[51] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 71, para. 3, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[52] Bulgaria, Bilitis Resource Centre Foundation (*Фондация „Ресурсен център – Билитис"*), official website: http://bilitis.org/.
[53] Bulgaria, Youth LGBT Organisation "Deystvie" (*Младежка ЛГБТ организация „Действие"*), official website: http://deystvie.org/.
[54] Bulgaria, LGBT Plovdiv (*ЛГБТ Пловдив*), official website: https://facebook.com/lgbt.plovdiv.
[55] Bulgaria, Sofia Pride Foundation (*Фондация „София прайд"*), official website: https://facebook.com/sofiapride.
[56] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), decision from 19 June 2007, case file No. 175/2006, 19 June 2007. The PADC did not provide access to the decision itself. This is why the case is not described in the Annex.

Protection Against Discrimination Commission. It was initiated upon a complaint lodged by a prisoner claiming discrimination on the grounds of sexual orientation against the prison's administration in the town of Pazardzhik (*Пазарджик*). The complainant alleged that he has been discriminated when applying to a workplace and has been offended due to his sexual orientation. The PADC rejected the complaint, as 'unjustified' in its part concerning the requests for establishment of sexual harassment and discrimination in selecting a job.

In fact, until 2007 there were only five legal cases of sexual orientation discrimination altogether. Two of these concerned homophobic hate speech and are considered below, in Chapter F.1. Hate Speech and Criminal Law. One of the remaining three cases concerned access to non-education services provided by a university (reported in Annex 1 below); another concerned a refusal by a public authority to permit a peaceful LGBT public assembly and is reviewed in Chapter E. Freedom of Assembly; and the last concerned police harassment in the street of a gay man (reported in Annex 1 below).

During 2008 and 2009 four more cases were decided by the Protection Against Discrimination Commission. Three of them were closed because the complainants did not respond to the requests by the PADC for more information about the exact place and time of the discriminative acts or the exact contact details of the alleged discriminators. The fourth case was opened by BGO Gemini in July 2008 because of the discriminatory provisions of the Family Code draft that regulate as marriage only the union between a woman and a man and that do not recognise the factual cohabitation of same-sex couples. The case finished with a recommendation[57] to the legislators who drafted the Family Code (*Семеен кодекс*). The PADC recommended to legislators to recognise the same rights for same-sex couples as those of different-sex couples with the reasoning that the current provisions are discriminative and violate international treaties to which Bulgaria is a party. However, the legislators did not comply with the recommendation.

In the 2010 – 2013 period there have been 15 new sexual orientation discrimination cases, decided by the PADC, several of which were subsequently reviewed by courts. No cases initiated before a court were identified.

Nine of those new decisions concern homophobic speech and are considered below, in Chapter F.1. Also there, three other cases concerning personal insults on the basis of the perceived homosexual orientation of the applicants are briefly discussed. One of the remaining three cases was initiated by three LGBT activists from the LGBT – Plovdiv (*ЛГБТ - Пловдив*) NGO against the National Centre for Transfusion Haematology (NCTH) (*Национален център по трансфузионна хематология, НЦТХ*) regarding an informational brochure about blood donation, which forbids donation of blood from people who are "homosexual or have sexual contacts with homosexuals". The PADC found that the brochure in question was printed at some time before 2008 and has not been distributed by the Centre after 2008. Thus, finding that the statutory time limit of there years has passed, discontinued the case.[58]

Another case concerned a regulation of the Ordinance on Public Order (*Наредба за обществения ред*) of the Pazardzhik Municipal Council (*Общински съвет – Пазарджик*) which prohibited 'the public demonstration and expression of sexual and other orientation in public spaces' and is discussed in Chapter E. The last one of the new cases concerns discrimination at the workplace and is discussed

[57] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), recommendation № 2, 1 July 2008.
[58] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 32/2012, case file № 222/2011, 2 February 2012.

below.

In January 2005, Bulgaria Air, the national carrier, announced a promotion for St. Valentine's Day – two air tickets for the price of one for any couple in love. The company sent out a written instruction to all tour operators selling its tickets to make the offer available only to heterosexual couples. BGO Gemini became aware of this fact early on and obtained a copy of the instruction. It was notified of a case in which an individual gay customer was refused access to the offer on explicit sexual orientation grounds. BGO Gemini then sought advice from a lawyer with the Bulgarian Helsinki Committee concerning possible legal action and they prepared the necessary set of evidence documenting the case. They also sought assistance from journalists at a rights-sensitive radio station, Radio Net (no longer broadcasting), who undertook situational testing by phone with the company, requesting two tickets for the price of one for a gay couple. A company employee made an explicit refusal motivated by sexual orientation. The journalist then contacted the company's Sales Manager seeking confirmation as to whether this was official company policy and was expressly informed that it was. The journalist then advised the manager that he might want to consider the possibility of the company being taken to court under anti- discrimination law over this. Just days later the company issued a new written instruction notifying all sales offices to provide customers with equal access to the offer irrespective of their sex.

The case sets a precedent. First, it involves a private sector entity revoking a discriminatory act of its own accord, without coercion from any authority. Secondly, it illustrates the pre-emptive power of the anti-discrimination legislation. Thirdly, it is an example of civil society cooperation and civil society/ media cooperation. And fourthly, it shows how situational testing can be used to document breaches of anti-discrimination rights.

The first and only one in the reporting period case of discrimination on the basis of sexual orientation in the sphere of employment was decided by the PADC in 2012. [59] After participating in a Mr Gay Competition, the applicant Mr Chavdar Arsov lost his job as a national coach within the Bulgarian Federation of Sleds on Artificial and Natural Tracks (*Българска федерация по шейни на улей и естествени трасета*) and was not allowed to participate in competitions. Allegedly, Mr Arsov was working as a non-contracted national coach and was running his own sport club since 2006. After his participation in a Mr Gay Competition in Sofia and Oslo the Federation opened an official position for a new national coach. Although, Mr Arsov was the only candidate, the Secretary of the Federation on numerous occasions discussed the sexual orientation of the applicant using highly pejorative language. Furthermore, the club of the applicant was expelled from the Federation for undermining its prestige. The PADC found that, although there was a dispute on whether Mr Arsov was actually working as a national coach, undoubtedly the Secretary of the Federation has discriminated Mr Arsov on the basis of his sexual orientation. The Commission found that the acts of the defendant constituted direct discrimination in the form of harassment and recommended to him to refrain from further discrimination. Regardless of the decision, there were no further implications for the Federation or for Mr Arsov.

[59] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 208/2012, case file № 13/2011, 17 July 2012.

B. Freedom of movement

According to Article 45 of the Charter of Fundamental Rights, every citizen of the European Union has the right to move and reside freely within the territory of the Member States. According to Directive 2004/38/EC (29 April 2004), family members of European Union citizens who accompany or join them also benefit from the right to move and reside within the territory of the Member States under certain conditions.

Domestic legislation related to foreigners does recognise family ties as giving rise to a derived right to residence in Bulgaria. The conditions imposed on family reunification for the family members of nationals are in general more liberal than those imposed on family members of foreigners. However, after EU accession on 01 January 2007 citizens of the European Union are no longer considered foreigners under national legislation. Pursuant to Article 1, para. 2 of the Foreigners in the Republic of Bulgaria Act (*Закон за чужденците в Република България*),[60] 'foreigner in the sense of this law shall be any person who is not a Bulgarian citizen or is not a citizen of another Member State of the European Union, of a state party to the Agreement on the European Economic Area or of the Swiss Confederation".

As of 1 January 2007 specific legislation – the Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*),[61] regulates the residence requirements for EU citizens and their spouses. Furthermore, as of 2012 the definition of a family member was amended to include explicitly the descendants and the ascendant of the current cohabitant of an EU citizen. Thus, the concept of family members was extended for all citizens of the European Union, as well as for nationals of Iceland, Liechtenstein, Norway and Switzerland, to include: 1. the spouse or current cohabitant of the citizen of the EU; 2. the descendants of a citizen of the European Union under 21 years of age or are still dependent on him/ her, including the direct descendants of the spouse/ cohabitant; 3. ascendants who are maintained by the citizen of the European Union or by his/her spouse/ cohabitant.[62]

The legal definition of §1 (1) does not specify the gender of the person entitled to rights under the Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act. Thus, the Act does not explicitly exclude LGBT family members from the right to enjoy the residence privileges of their EU spouses or cohabitants. In practice, there have been no registered cases of either the granting or of the refusal of visas and/or residence permits LGBT spouses or cohabitants. An interviewed LGBT activist[63] reported about a case in which the Bulgarian municipal authorities in Blagoevgrad

[60]Bulgaria, Foreigners in the Republic of Bulgaria Act (*Закон за чужденците в Република България*), (23 December 1998), Art. 2 (adopted on 10 April 2007), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134455296.

[61] Bulgaria, Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act (Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства) (1 January 2007), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135535758. This act provides for the entry, residence and exit of EU citizens and the members of their families who accompany them and does not provide for third country nationals and their family members. The Act on Foreigners in the Republic of Bulgaria provides for the entry, residence and exit of the latter. According to both acts the qualification of someone as a family member is done by the Ministry of Interior if the third country national does not seek asylum or refugee status. If he/ she does seek asylum or refugee status this qualification is done by the State Agency for Refugees.

[62] Bulgaria, Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*) (1 January 2007), Additional provisions, Art. 1, para. 1, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135535758.

[63] Interview on 09 February 2010 with Axinia Gencheva, former executive director of BGO Gemini, currently consultant to the

(*Благоевград*) rejected to register the same-sex marriage between a Spanish and a Bulgarian woman but according to the best knowledge of the reporter, a court case has never been initiated. This is the only information found by the research regarding the implementation of Directive 2004/38/EC (29 April 2004) in Bulgaria.

All EU citizens and their family members who wish to reside in Bulgaria for more than 90 days are issued with a long-term or permanent residence certificate by the National Police Service. According to the most recent changes of the Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act from 2012, such a certificate is issued by the Migration Directorate of the Ministry of Interior (*Дирекция „Миграция' – МВР*), the Sofia Capital Directorate (*Столична дирекция на вътрешните работи*) or any other regional directorate of the Ministry of Interior.[64] Long-term residence is for a maximum period of five years. A long-term residence permit is issued on several other grounds, such as employment or self-employment, retirement, etc. Where a European Union citizen submits an application for a long-term residence certificate in his or her capacity as a family member of another European Union citizen, the sole condition is to prove that he or she is a family member of or is currently cohabiting with the European Union citizen. Nothing regarding LGBT people is mentioned in the law, nor in practice there are cases to discuss and/ or study. LGBT partners of EU citizens are not specifically entitled to enjoy family rights in relation to freedom of movement according to the Bulgarian legislation.

LGBT third country nationals who are spouses of EU citizens are entitled in principle to exercise their rights of freedom of movement and to reside within the territory of the Member States, though this entitlement is not yet supported by any evident cases of practical implementation. It emerges from the fact that the legal definition of § 1 (1) of the Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act does not specify the gender of the person entitled to rights under the law and thus does not explicitly exclude LGBT family members from the right to enjoy the same residence privileges as their EU spouses or cohabitants.

For the purpose of family reunification, a family member (who is a third country national) of a Bulgarian citizen or of an EU citizen, may be: 1. a spouse; 2. unmarried minor relatives in the descending line; 3. relatives in the descending line over 21 years of age who are unable to provide for themselves due to serious health problems; 4. relatives in the ascending line; 5. other members of his/ her household who have been reliant entirely on his/her support in their state of origin or in their state of customary residence or whose serious state of health enforces the Bulgarian/EU citizen to take personal care of them.[65]

The Ministry of Interior is responsible for the qualification of a person as a family member of a Bulgarian/ EU citizen in case the third country national does not seek asylum or refugee status.

In 2005 a case was recorded of a gay couple who were recognised partners in Iceland and then sought recognition of their registered partnership before the Bulgarian authorities.[66] One of the partners was a

new LGBT NGO Bilitis.

[64] Bulgaria, Entry, Residence and Exit of European Union Citizens and Accompanying Members of Their Families Act (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*) (1 January 2007), Art. 7 (adopted on 13 March 2012), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135535758.

[65] Bulgaria, Foreigners in the Republic of Bulgaria Act (*Закон за чужденците в Република България*) (23 December 1998), Art.2, para. 6 (former para. 2) (adopted on 8 March 2013), available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2134455296.

[66] Bulgaria, Bulgarian Helsinki Committee (*Български хелзинкски комитет*). As of 27 February 2014 the specific web source is not available anymore.

Bulgarian national, the other an Icelandic national. They first tried to report the partnership before the Bulgarian consulate abroad, rather unsuccessfully. Later, the Icelandic partner obtained a short-term entry visa for Bulgaria on a different ground and the couple managed to enter the country. However, the Icelandic partner's attempt to prolong his stay in Bulgaria by obtaining a long-term stay permit on the basis of a registered partnership with a Bulgarian citizen failed. The police migration authorities politely explained to them that it would be useless to accept his application and subsequently refused to register the attempt to submit the application.

Again, no recorded cases were found of either the granting or the refusal of visas and/or residence permits for LGBT spouses or cohabitants. Bulgarian immigration law and practice of implementation and judicial interpretations are quite poor as actual immigration to Bulgaria started in the middle of 1990s. Academic views, comments or analysis are missing.

The Bulgarian national legal system does not recognise same-sex couples either as spouses or as cohabitants. During discussions about the new draft of the Family Code (*Семеен кодекс*) and other legislation regarding foreigners (which took place in 2006 and 2007) there were no indications that 'cohabitation' would be interpreted in any other way than as a 'marriage-like relationship', i.e. as the union between a man and a woman. Under Article 7 of the 1985 Family Code, a marriage could have been agreed between a man and a woman upon mutual consent declared explicitly before a civil registration clerk. On 1 October 2009 a new Family Code[67] was adopted in Bulgaria. But it again did not reflect any of the ideas of equalising the rights of same-sex couples to those of the married different-sex couples. This idea met the strongest resistance among the members of the Parliament although it was widely discussed in the media. Currently, even if one of the partners is a parent the other does not have the right to adopt or register his/ her child. Thus, children are not allowed to inherit their parents if they are of the same sex. Adoption can also be hindered with the argument that any child is best cared for by two persons of different sex.

Given all this, there is no existing legal mechanism in order to officially recognise the rights of same-sex couples. No references in the literature could be provided, as there was no relevant literature found by the researcher. Nevertheless, under Article 75, para. 3 of the International Private Law Code, a marriage which was concluded in another state according to the rules and criteria set in the national legislation of that state is recognised by the Bulgarian authorities if the couple established their habitual residence in the given state in conjunction with Article 79, para. 2 of the Code.

This was confirmed by the authorities in 2011, when as a part of a research conducted in 2011 by the reporter (the Bulgarian Helsinki Committee) for the purpose of a comparative survey of the University of Leiden on the recognition of same-sex couples moving from one European country to another, the BHC forwarded questions to the Ministry of Foreign Affairs (MFA) regarding some specific situations of recognition of rights of same-sex couples. The MFA provided to the BHC an inquiry from the International Legal Cooperation and European Questions Directorate (*Дирекция Международно правно сътрудничество и европейски въпроси*) of the Ministry of Justice. According to the information provided, same-sex marriage between a Bulgarian citizen and a citizen of another EU country would not be recognised in Bulgaria for the purpose of a survivor's pension as according to Article 75, para. 3 of the International Private Law Code (*Кодекс на международното частно право*). Furthermore, according to the information provided by the Ministry, a same-sex marriage of two citizens of another EU country residing in Bulgaria would not be recognised for the purpose of

[67] Bulgaria, Family Code (*Семеен кодекс*) (1 October 2009), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135637484.

inheritance. Finally, the right to a lower inheritance tax of a same-sex couple who has entered into a registered partnership in another European country and is residing in Bulgaria would not be recognised by the Bulgarian authorities due to the lack of a regulation for registered partnership in Bulgaria. No changes in the relevant legislation have been made since the inquiry was made in 2011.[68]

The research did not find any statistics available, although the reporter (the Bulgarian Helsinki Committee, the only non-governmental human rights organisation established in 1992 to protect the rights of refugees and migrants) and the state authorities in charge of granting the legal status of asylum, dealing with migrants and refugees, have been working closely together since 1999. On the strength of this experience, we can attest that official statistics are not kept and that no such cases have been recorded. Specific requests for information required for this research were not made, as the length of time before a reply might be expected would be much longer than the time estimated for the research and because of the past practice by state authorities of not responding to data requests.

No new substantive legal developments in the 2010 – 2014 period regarding LGBT people's freedom of movement were found. No case law was found for the reporting period.

[68] Bulgaria, Ministry of Foreign Affairs (Министерство на външните работи), International Law and EU Law Directorate (*Дирекция „Международно право и право нас ЕС"*) (2011), Letter № 25-00-174 to the Bulgarian Helsinki Committee, 19 October 2011.

C. Asylum and subsidiary protection

According to Article 10 (1) (d) of Council Directive 2004/83/EC (29 April 2004) on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection (the 'Qualification Directive'), persecution of a group based on a common characteristic of sexual orientation might be considered to be persecution 'for reasons of membership of a particular social group' for the purpose of obtaining refugee status. According to Bulgarian legislation, it is unclear whether transgender people could be recognised as belonging to a 'social group' and, if so, which.

According to Article 2(h) of Council Directive 2004/83/EC of 29 April 2004 (the "Qualification Directive"), family members in the context of asylum and/ or subsidiary protection include unmarried partners in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens.

According to § 1 (3) of the Asylum and Refugees Act 'family members' are: a) the spouse or the person with whom s/he is in a proven stable and long-term relationship and their non-married children under 18 years of age; b) those non-married children above the age of 18 that cannot provide for themselves due to serious health issues and c) the parents of both spouses, who are unable to provide for themselves due to their age or serious health condition. Thus, although, the text of the Bulgarian law seems neutral, regarding the sex of the person with whom a person granted a status is in a relationship with, the law does not recognise LGBT partners as family members for the purpose of obtaining derivative status – refugee status or subsidiary form of protection, i.e. humanitarian status Article 7 of the Family Code regulates the marriage as mutual agreement between a man and a woman. A new Family Code was adopted in 2009, which however did not introduce any forms of recognition of same-sex couples.

The practice on the relevant provision (Article24, paragraph 1, item 14 of the Act on Foreigners in the Republic of Bulgaria) followed the concept of heterosexual cohabitation as a ground to obtain residence, temporary or permanent. The adoption of the Entry, Residence and Exit of Citizens of the EU and Accompanying Members of Their Families Act on 1 January 2007 introduced the obligation to prove that the cohabitation was formally registered in the country of origin or the habitual residence of the couple. It brings an interesting opportunity to interpret the law in a way that acknowledges LGBT couples as cohabitants for the purposes of the Law on Foreigners in the Republic of Bulgaria or the Entry, Residence and Exit of Citizens of the EU and Accompanying Members of Their Families Act, if they can prove that their cohabitation was recognised in a formal manner by the relevant authority of their country. There is no practice yet to confirm this interpretation. Nonetheless, this option would not be applicable for asylum or refugee couples as by definition they cannot be asked to provide evidence originating from their country of origin and often, if not in principle, this is the case.

The reporter who has been working closely with the state authorities in charge of granting the legal status of asylum have been working closely together since 1999, did not identify any relevant statistics or any cases that had been recorded.

There were no new developments regarding asylum and subsidiary protection during the period 2007 – 2009. Furthermore, the research did not find any information about application of phallometric testing in Bulgaria.

The lack of available statistics was confirmed in 2014 after an official inquiry was made by the reporter to the State Agency for Refugees with the Council of Ministers (SAR) (*Държавна агенция за бежанците при Министерски Съвет. ДАБ*). The SAR stated in an official letter that as there are only a few cases of persons seeking asylum in Bulgaria on the basis of their sexual orientation or gender identity, an official statistic on that matter is not being recorded by the Agency.[69]

Nevertheless, in October 2010 as part of the "Fleeing Homophobia" Project commissioned by COC Netherlands and VU University of Amsterdam, the Bulgarian Helsinki Committee made a research about LGBT asylum seekers in the country and prepared a national report.[70] According to the report there were two asylum claims on average per year submitted by LGBTI people, the vast majority of which by gay men. Only one case was identified, where the applicant was a bisexual married man from Lebanon, who was persecuted by his family and wife after being caught having an affair with another man. The Bulgarian authorities found his case to be not genuine and ill-founded, therefore he was denied asylum. Thus, bisexuality could be a stumbling stone for the decision makers, as according to the report, most of the interviewees from the State Agency for refugees expressed the opinion that a married man with children could not be bisexual.
The Report also found that in general, the overwhelming attitude of suspiciousness and mistrust of the decision-maker in Bulgaria makes it hard to prove most of the refugee stories that asylum seekers do state in order to substantiate their recognition and protection. Furthermore, the Report found that in many cases LGBTI asylum seekers were obliged to go to a sexologist for medical check and the issue of a certificate, that the applicant is actually homosexual.

Furthermore, since 2010 six cases of people who sought asylum on the basis of their sexual orientation appealing against negative decisions of the State Agency for Refugees were found.

Thus, with a decision from 9 August 2010 a three-member panel of the Supreme Administrative Court (SAC) confirmed a decision of SAR which rejected the application of a Nigerian citizen, who since the age of 6 has lived and studies in Bulgaria. [71] The application was filed among other grounds on the basis of the alleged homosexual orientation of the applicant. During the lawsuit, however, SAC found out that the applicant was alleging that he is homosexual, for the purpose of the sought asylum only. Nevertheless, the Court credited a report prepared by the SAR, according to which although homosexuality was punished by death in some regions of Nigeria, there were constitutional guarantees for protection and freedom of movement which were enough guarantees for the safety of the applicant. The decision was confirmed by a 5-member panel of the SAC on 14 February 2011.[72]

In another case, the Sofia City Administrative Court (*Административен съд София-град*) confirmed a decision of SAR where an Iraqi citizen sought refugee status because of his homosexuality.[73] The Court found that there were discrepancies in his refugee story and that there was no evidence in it which

[69] Bulgaria, State Agency for Refugees with the Council of Ministers (*Държавна агенция за бежанците при Министерски съвет*) (2013), Letter № 02-3116/21 December 2013, signed by Mr. Nikolay Chirpanliev, Head of the Agency.
[70] Bulgaria, Bulgarian Helsinki Committee (2010), National report prepared by the researcher Dessislava Petrova for the Fleeing Homophobia, Seeking Safety in Europe research project (unpublished). The collective report of the project is available at: http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN_tcm22-232205.pdf.
[71] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), decision № 10409/2010, case file № 6065/2009, 9 August 2010.
[72] Bulgaria, Supreme Administrative Court five-member jury (*Върховен административен съд, пет-членен състав*), decision № 2193/2011, case file № 12542/2010, 14 February 2011.
[73] Bulgaria, Sofia City Administrative Court (*Административен съд София-град*), decision № 2936/2012, case file № 1763/2012, 21 May 2012.

supported that he had been prosecuted or persecuted because of his homosexuality. No information was found on whether the decision was appealed against.

In a third case a citizen of Cameroon appealed against a decision of the SAR to reject his application for refugee or humanitarian status. The applicant submitted that he was afraid that if he returns to Cameroun, he would face persecution from the members of his tribe, because of his Catholic religion, on the one hand, and from the Government because of his participation in a student organisation and his homosexuality, on the other. Among others, the applicant submitted that he was arrested for three days, when the police authorities learned about his sexual orientation. In a shortened procedure, the SAR rejected his application on the basis of some contradictions in his refugee story. The Haskovo Administrative Court (*Административен съд Хасково*), however, quashed this decision on the basis that as the three arguments presented by the applicant fell into the notion of the Asylum and Refugees Act and thus, cannot be decided in substance during a shortened procedure. Furthermore, the Court found that the interviewing authority did not make any attempt to clarify the alleged contradictions in the applicant's story.[74]

In another case, decided by the Haskovo Administrative Court (*Административен съд Хасково*), the Court confirmed a decision of the SAR to reject an application from another Cameroonian citizen who applied for asylum on the basis of quashes with his uncle and fear from being persecuted because of his homosexuality. The Court found that apart from the family issues, described by the applicant and which do not fall into the notion of the Asylum and Refugee Act, there was no evidence that the applicant has been persecuted by the authorities because of his sexual orientation. [75]

The fifth case concerns an application of an Iraqi gay man, who sought asylum in Bulgaria, on the basis of fear that his uncle would kill him, as he did with his cousin, when it became known, that the applicant and his cousin had a homosexual relationship. The Sofia City Administrative Court confirmed the negative decision of the SAR, on the basis that the alleged threats that the applicant had received from his uncle were of a personal nature, and there was no evidence that the applicant had been subjected to any discriminatory treatment or to persecution by the authorities or other groups.[76] The decision was confirmed by the Supreme Administrative Court which added that there was no evidence in the refugee story of the applicant that he had tried to get protection from the state authorities.[77]

In the last lawsuit, concerning people seeking asylum on the basis of their sexual orientation, the Sofia City Administrative Court confirmed a decision of the State Agency for Refugees to reject the application of an Iraqi citizen, who sought asylum on the basis of his fear that if he returns to his country of origin he would be killed by his brother, who physically assaulted him when he learned about his sexual orientation. According to the Court this did not constitute a valid reason for giving an asylum protection as the nature of the assault was of a family nature and the applicant was not persecuted in any way by the Iraqi authorities. Furthermore, according to the Court, the fact that, although homosexuality was not "widely accepted" in Iraq, it was not illegal and as such did not constitute automatically

[74] Bulgaria, Haskovo Administrative Court (*Административен съд Хасково*), decision № 213/2013, case file № 226/2013, 1 August 2013.
[75] Bulgaria, Haskovo Administrative Court (*Административен съд Хасково*), decision № 224/2013, case file № 254/2013, 22 August 2013.
[76] Bulgaria, Sofia City Administrative Court (*Административен съд София-град*), decision № 3103/2013, case file № 1994/2013, 10 May 2013.
[77] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), decision № 17360/2013, case file № 8878/2013, 20 December 2013.

persecution. [78]

In general, it can be said that in order an application on the basis of sexual orientation for asylum to be successfully recognised by the authorities, a proof that an actual persecution made by the authorities in the country of origin, must be shown.

No cases of transgender people seeking asylum were identified. As noted above, the State Agency for Refugees with the Council of Ministers (SAR) (*Държавна агенция за бежанците при Министерски Съвет. ДАБ*) stated in an official letter that no official statistics is being recorded on cases of people seeking asylum on the basis of their gender identity.[79] Furthermore, the two biggest legal information databases (Ciela.net[80] and Apis.net[81]) were consulted in order cases of transgender asylum seekers to be found.

No change in the corresponding legislation has been identified after the enactment of the recast Qualification Directive 2011/95 has been identified. Given the jurisprudence analysed above, there is still no effect on the situation of LGBT people seeking asylum of the recent CJEU judgement on cases C-199/12, C-200/12 and C-201/12.

[78] Bulgaria, Sofia City Administrative Court (*Административен съд София-град*), decision № 6055/2013, case file № 7755/2013, 7 October 2013.
[79] Bulgaria, State Agency for Refugees with the Council of Ministers (*Държавна агенция за бежанците при Министерски съвет*) (2013), Letter № 02-3116/21 December 2013, signed by Mr. Nikolay Chirpanliev, Head of the Agency.
[80] Bulgaria, Ciela NET (*Сиела НЕТ*), available at: http://web6.ciela.net/.
[81] Bulgaria, Apis Web (*Апис Уеб*), available at: http://web.apis.bg/.

D. Family reunification

According to Article 4(3) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Member States may authorise the entry and residence of the unmarried partner, who is a third country national with whom the sponsor is in a duly attested, stable, long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership.

Article 34, paragraph 1 of the Asylum and Refugees Act[82] entitles the refugee or the person benefiting from subsidiary protection the right to claim family reunification in Bulgaria granted by the asylum authority, the State Agency for the Refugees. Paragraph 1(3) of the Additional Provisions of the same act defines as a family member "[…] the spouse or the person with whom s/he is in a proven stable and long-term relationship and their minor and non-married children". The State Agency for the Refugees performs the qualification of third country nationals as family members under the Asylum and Refugees Act. Under Bulgarian immigration legislation concerning third country nationals who are not refugees or persons benefiting from subsidiary protection the qualification of a person as a family member is done by the Ministry of Interior (National Police Service).

However, paragraph 5 of the given article requires the family reunification applicant to provide official documents evidencing the matrimonial state or the relationship. Despite this, if the family reunification applicant cannot present official documents proving the matrimonial state or the relationship, the existence of a proven stable and long-term relationship may be evidenced by a written declaration or in another way. In practice, no cases where reunification was requested for LGBT partners or official statistics of such cases had been recorded to the knowledge of the reporter

In the 2007 – 2009 period again no cases were found.

The lack of official statsitc was confirmed after an official inquiry for information about cases of applications for family reunification by LGBT people was sent to the State Agency for Refugees. According to the Agency there are only few such cases and this is why no official statistics is being recorded.[83] Furthermore, the two biggest legal information databases (Ciela.net[84] and Apis.net[85]) were consulted in order cases of LGBT people seeking family reunification to be found. No court cases for the 2010 – 2014 period, however, concerning family reunification of LGBT people were identified.

A third country national may enter the territory of Bulgaria if s/he holds valid documents, namely a valid passport, or another document for travel abroad substituting the passport, and an entry authorisation (transit visa or residence visa). Visas are not required where Bulgaria and the country whose nationality the foreigner holds have concluded a treaty on visa-free entry clearance. A residence permit is issued to a foreigner who intends to reside in the country for a period exceeding 180 days. The person must first apply for a long-stay visa (visa D) abroad, then enter the country on the basis of the visa D and submit an application for a long-term residence permit (continuing – up to one year, or permanent – indefinite).

The research did not find any relevant statistics to demonstrate the impact/social reality of the relevant

[82] Bulgaria, Asylum and Refugees Act (*Закон за убежището и бежанците*) (1 December 2002), Article 34, para.1 (adopted on 29 June 2007), available in Bulgarian at: http://lex.bg/laws/ldoc/2135453184.
[83] Bulgaria, State Agency for Refugees with the Council of Ministers (*Държавна агенция за бежанците при Министерски съвет*) (2013), Letter № 02-3116/21 December 2013, signed by Mr. Nikolay Chirpanliev, Head of the Agency.
[84] Bulgaria, Ciela NET (*Сиела НЕТ*), available at: http://web6.ciela.net/.
[85] Bulgaria, Apis Web (*Апис Уеб*), available at: http://web.apis.bg/.

legislation for LGBT people.

There were no cases in this field during the period 2007-2009.

An official inquiry for information about cases of applications for family reunification by LGBT people was sent to the State Agency for Refugees. According to the Agency there are only few such cases and this is why no official statistics is being recorded.[86] Furthermore, the two biggest legal information databases (Ciela.net[87] and Apis.net[88]) were consulted in order cases of LGBT people seeking family reunification to be found. No court cases for the 2010 – 2014 period, however, concerning family reunification of LGBT people were identified.

[86] Bulgaria, State Agency for Refugees with the Council of Ministers (*Държавна агенция за бежанците при Министерски съвет*) (2013), Letter № 02-3116/21 December 2013, signed by Mr. Nikolay Chirpanliev, Head of the Agency.
[87] Bulgaria, Ciela NET (*Сиела НЕТ*), available at: http://web6.ciela.net/.
[88] Bulgaria, Apis Web (*Апис Уеб*), available at: http://web.apis.bg/.

E. Freedom of assembly

Freedom of assembly is stipulated as a basic citizen's right in the Bulgarian Constitution of 1992. There is a notification regime for public assemblies in Bulgaria, as provided by the Assemblies, Meetings and Marches Act (AMMA) (*Закон за събранията, митингите и манифестациите, ЗСММ*).[89] In spite of being outdated, the Act was generally considered to be balanced and relatively liberal, according to the Organisation for Security and Co-operation in Europe and as illustrated by certain cases presented to the European Court of Human Rights. Nonetheless, it is interpreted and applied in a rather incoherent way by the municipal authorities and the national courts. Whn adopted, the notification procedure, prescribed in the AMMA, required prior notification to be submitted to the municipal authorities. The deadline was 48 hours prior to meetings (rallies) and five days before marches. Within 24 hours of being notified the mayor might be able to ban the event or propose a different timing and/or place. Otherwise, the event was supposed to be held according to the notification. The bans might be appealed before the regional courts, which are obliged to decide the case within a 24-hour time limit. The court decision could not have been subject to further appeal.

On 21 January 2010 the law was amended in a way that bans any events right in front of the Parliament, Presidency, Council of Ministers and military zones and extended the 48-hours required notification prior the event to a 72-hours one. If the mayor does not allow the public event within three-day period the organisers of the event might appeal the ban before the administrative court. The latter must decide within 24–hours. Despite the signals from NGOs that these amendments violate the political and civil rights of the citizens the majority in the Parliament members voted for them on 21 January 2010. The law did not enter into force as the trade unions asked the President to veto it and he did that on 1 February 2010. The main proposals concerned the exact parameters of the zones in front of the buildings where public events are banned and the reduction of the time-period for prior notification from 72 to 48 hours. Eventually, the law was changed to require a 72-hour prior notification (48-hour in urgent cases) for manifestations,[90] while the already existing 48-hour prior notification (24-hour notification in cases when it is impossible the regular notification period to be met) for meetings and rallies, was kept intact.[91] Furthermore, a ban on manifestations in a security area between 5 and twelve metres around the buildings of the Parliament, the Presidency, the Council of Ministers and military zones was introduced.[92]

Very few LGBT events had been organised before 2010. The organisers were usually the main LGBT NGOs in Bulgaria: Bulgarian Gay Organisation "Gemini" (BGO Gemini) (*Българска гей организация „Джемини", БГО „Джемини"*), Queer Bulgaria Foundation (*Фондация „Куиър България"*), Tangra Sport Club (*Спортен клуб „Тангра"*), as well as some LGBT clubs and lounges. Most of the events were organised by BGO Gemini (as of February 2010 the other LGBT NGOs seem inactive except of a new one called "Bilitis"). They describe the authorities' attitude towards their events as good, with some exceptions. The municipal authorities usually cooperated with the organisers to ensure the smooth course of the event. In some cases the mayors had not agreed to the time and place notified and proposed new ones, but these acts were considered reasonable by the organisers. The police usually provided a

[89] Bulgaria, Assemblies, Meetings and Marches Act (*Закон за събранията, митингите и манифестациите*) (2 February 1990), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.
[90] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), Art. 11 (adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.
[91] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), Art. 8 (adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.
[92] Bulgaria, Assemblies, Meetings and Marches Act *(Закон за събранията, митингите и манифестациите*) (2 February 1990), Art. 7, para. 2 and 3(adopted on 26 March 2010), available in Bulgarian at: http://lex.bg/laws/ldoc/2132284419.

reliable and non-obtrusive presence at the events.

From 2004 until until the date BGO Gemini was active, each year on 17 May it had organised an event to mark that date as the International Day Against Homophobia. In 2007 no public event was held, but in 2005 and 2006 big marches took place on 17 May in Sofia. In 2006 other public arts events were organised during the day, in addition to the march. The municipal authorities in Sofia cooperated with the organisers.

In the summers of 2005, 2006 and 2007, BGO Gemini organised national information campaigns under the title Pink Point. These events have included a marquee at a central location in a city where volunteers distribute information brochures and leaflets and answer questions during the day. In 2006 and 2007 Pink Point events were held only in Sofia. In 2005, when the campaign was launched for the first time, it was implemented as a tour of events around the country, covering the main cities: Sofia, Plovdiv, Stara Zagora, Bourgas and Varna. In each city the information point was maintained in the central square for three or four days and the attendance rate was about 100-150 people per day. The Royal Embassy of the Kingdom of the Netherlands financially supported the campaign tour in 2005. There was no trouble during the campaign tour in 2005, with the exception of Varna, where the tour was supposed to end.

Three events were planned for Varna on 24 – 27 August 2005: the Pink Point information marquee in the central square; an open stage in front of the night club Alexander; and a beach volleyball tournament at the central city beach, organised by the Tangra Sport Club. All these events were banned by the mayor. The bans were imposed more than a month after the 24-hour deadline had expired. In fact, the ban was issued on 23 August, i.e. one day before the event. Thus, in accordance with the AMMA, the organisers could legally set up the events, regardless of the mayor's ban. Nevertheless, the organisers decided to avoid confrontation with the authorities and held the Pink Point at a private lounge at the central beach, though with a very low rate of attendance – only a few visitors came. The sporting event and the open stage performance were cancelled. All the regional media approved the mayor's decision. Thus, the organisers did not appeal the ban before the Varna Regional Court, due to the overwhelming media attention. The only reaction came from BGO Gemini, who lodged a complaint before the Protection Against Discrimination Commission against the ban imposed on the Pink Point event. The NGO argued that the mayor of Varna had explicitly expressed his prejudices and that there was no equal treatment, since he had allowed a huge pornography festival to take place on 9-13 August 2005. BGO Gemini alleged the presence of indirect discrimination in the mayor's ban before the Commission and that allegation was fully accepted by the anti-discrimination body. However, the facts suggest a clear case of covert direct discrimination, according to Bulgarian anti- discrimination law. The Commission found indirect discrimination in the case and a fine BGN 500 (€ 255) fine was imposed on the Varna municipality.[93] The mayor appealed the decision before the Supreme Administrative Court.[94] The first instance three-member jury confirmed the Commission's decision. However, the second instance five-member jury revoked the decision, finding that there was no indirect discrimination in the case and that the Commission's reasoning did not stand up to scrutiny and was incomplete.[95] The court returned the case to the Commission on 16 November 2007. With a second decision the PADC again found that the actions of the Varna Municipality constituted indirect discrimination and imposed a fine of 500 BGN

[93] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 46/2006, 17 October 2006.
[94] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision №.4752/2007, case file № 11478/2006, 15 May 2007.
[95] Bulgaria, Supreme Administrative Court, five-member jury (*Върховен административен съд, пет-членен състав*), Decision № 11295/2007, case file № 6407/2006, 16 November 2007.

(€ 255).[96] This decision was appealed by the municipal authorities before the Supreme Administrative Court. On 22 July 2008 a three-member jury revoked the decision of the PADC,[97] but, eventually, after an appeal of the Commission, a five-member jury confirmed that there the actions of the Municipality was discriminatory.[98]

On 25 – 29 October 2006 the International Lesbian and Gay Association Europe (ILGA – Europe)[99] Annual Conference was held in Sofia where representatives of all the LGBT NGOs in Europe gathered for four days. The multi-day event was supposed to end with an LGBT march through the streets of the city centre on the last day, 29 October 2006. BGO Gemini duly notified the municipal authorities and no ban was imposed within the 24-hour deadline for banning. Nonetheless, later on the municipality contacted the organisers, serving them a banning order for the event. The ban was justified by the lack of sufficient police resources, as the presidential elections were being held on the same day. The ban was imposed after the 24-hour deadline had expired. Thus, in accordance with the AMMA, the organisers could legally have held the march, regardless of the mayor's ban. Nevertheless, the organisers decided that it would be too risky to march through the streets without a police presence. BGO Gemini cancelled the event.

In June 2008 and 2009 the LGBT people organised march events (pride parades) in Sofia. On 28 June 2008, neo-Nazi groups aggressively attacked the first LGBTQ Pride march in Sofia, Bulgaria. A week before the march, the Bulgarian National Alliance (BNA) (*Български национален съюз, БНС*), at the time the most visible nationalist organization in the country, called for a "week of intolerance". The BNA strongly encouraged nationalistic groups to organise themselves against the right of the queer community in Bulgaria to peacefully march, which resulted in loosely organized violence during the festivities. BNA members and other neo-Nazis threw Molotov cocktails and small explosives at the participants of the Pride march. Fortunately, no injuries were reported. However, more than eighty skinheads, including Boyan Rassate (head of the BNA) were arrested for their attempted harm and direct violence toward pride participants.[100] In June 2009 neo-Nazi groups were once again organizing themselves against the march and Bulgarian queers' ability to defend their human rights. The Bulgarian government not only tolerates but also encouraged such attitudes. Two of the parties in the Parliament of Bulgaria are nationalistic and one of them, Ataka, called for "the men to beat up the gays". In addition, the Prime Minister of Bulgaria and head of the socialist party, Sergei Stanishev said that he did not like the "manifestation and demonstration of such orientations". The gay community organised themselves to send letters of concern to the President of Republic of Bulgaria and uploaded a short cartoon film with their statement on the Internet in English.[101] In 2009 over 250 persons participated in the parade guarded by 120 police officers and fifty private guards. There were no incidents and attacks. The BGO Gemini initiated a case before the PADC and also the prosecution office regarding the attacks, the hate speech and the incitement to discrimination during the pride parade in June 2008.[102] The PADC found

[96] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 50/2008, case file № 17/2006, 24 March 2008.
[97] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision № 8915/2008, case file № 5355/2008, 22 July 2008.
[98] Bulgaria, Supreme Administrative Court, five-member jury (*Върховен административен съд, пет-членен състав*), Decision № 2807/2009, case file № 14722/2008, 4 March 2009.
[99] ILGA – Europe (2006), 'ILGA-Europe members gather for anniversary annual conference', Press release, 23 October 2006, avilable at: http://ilga-europe.org/home/about_us/annual_conference/sofia_2006/ilga_europe_members_gather_for_anniversary_annual_conference.
[100] Bulgaria, Sofia Pride 2009, Official website, available in Bulgarian at: http://sofiagaypride2009.wordpress.com/.
[101] Bulgaria, Sofia Pride 2009 (2009), Video Massage to the President of Bulgaria, 29 May 2009, available at: http://goo.gl/ugq4UH. .
[102] Interview with Axinia Gencheva on 9 February 2010, former executive director of BGO Gemini, currently consultant of the new LGBT NGO Bilitis.

discrimination in the case according to the interviewed former executive director of BGO Gemini. The PADC itself did not provide any information about such a case. The prosecution office opened criminal proceedings against Boyan Rassate upon request by the BGO Gemini and he was sentenced by the court to spent six months on probation (the information is again provided by the former executive director of BGO Gemini which initiated the case, but no access to the decision was ensured during the research period).

On 18 November 2009 the municipal council of Pazardzik adopted local public order regulations[103] explicitly banning "public demonstration and expression of sexual orientation in public places" in Art. 14. While the language was neutral, the intent was to curtail homosexual expression in public. This is the first time such a norm is adopted in Bulgaria. It was a precedent attempt by the authorities to prevent open gay expression in public. The move came after the first two consecutive annual gay pride parades in Sofia.

The new regulation was challenged by Mr. Radoslav Stoyanov and Mr. Dobromir Dobrev – two LGBT activists, before the Protection Against Discrimination Commission (PADC). With a decision[104] from 11 May 2010 the PADC found that with adopting the regulation, the municipal council has committed direct discrimination and made a prescription to the Council to revoke the text of the regulation. The PADC decision was fully confirmed by the Supreme Administrative Court.[105] The discriminative regulation was also reviewed in another lawsuit, initiated by the Pazardzhik Regional Prosecutor's Office. On 8 November 2010 the Pazardzhik Administrative Court quashed the regulation due to several administrative irregularities – lack of a possibility of a public discussion and lack of publicly available motives.[106] This decision was later confirmed by the Supreme Administrative Court on 6 April 2011.[107] In March 2010, members of the LGBT Youth Organisation "Deystvie" organised a protest against the discriminatory ordinance in the downtown Pazardzhik The activists were attacked by nationalists who had come from Sofia and Plovdiv to oppose the protest. Two police officers were wounded and eight nationalists were arrested for hooliganism as a result.

In the 2010 – 2013 period LGBT activists continued to organise the annual Sofia Pride marches. The third pride march (Sofia Pride) took place in Sofia on 26 June 2010. A record number of 800 participants took part in the march. There were no major incidents and the police reacted adequately to provocation attempts by nationalists. At the same time, the organisers were made to pay the Sofia Directorate of Interior Affairs (SDIA) (*Столична дирекция на вътрешните работи, СДВР*) BGN 4,158 (€ 2,126) for providing additional numbers of policemen for security and preserving the public order.[108] This sum was a big burden for the organisers and may be regarded as a potentially serious setback for the freedom of assembly in the country, especially when it comes to events that are likely to attract resistance and counterdemonstrations.

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[103] Bulgaria, Pazardzhik Municipal Council (*Общински съвет Пазарджик*), "Regulations for the public order in Pazardzhik Municipality" („*Наредба за обществения ред в община Пазарджик*"), adopted with a Decision № 61/27 April 2006 and amended with Decision № 211/12 November 2009.

[104] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 107/2010, Case file № 271/2009, 11 May 2010.

[105] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision No.9824/2011, case file № 9292/2010, 1 July 2011.

[106] Bulgaria, Pazardzhik Administrative Court (*Административен съд Пазарджик*), Decision № 439/2010, Case file № 508/2010, 8 November 2010.

[107] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision No.4851/2011, case file № 15716/2010, 6 April 2011.

[108] Bulgaria, Sofia Pride 2010, Financial Report, available in Bulgarian at: http://sp2010.deystvie.org/bg/component/k2/item/download/10.

On 18 June 2011 the fourth annual Sofia Pride march was held. Following the upward trend from the previous year, more than 1,200 people took part. The march itself took place without any incidents and was held under tighten security measures. After the Pride, however, five volunteers who participated in the organisation of the march were attacked on their way home by a group of young men. The incident is described in chapter F 2. As it was the case in 2010, the organisers were again obliged to pay additional tax for security, which has been criticised strongly by Amnesty International.[109] The Pride was supported by a number of foreign embassies and, for the first time, by a municipal councillor – Mr Georgi Kadiev, who was also a candidate for mayor in Sofia at the time.

No specific action against the imposed taxes has been taken by the organisers of the pride marches in 2010 and 2011. The tax was removed after the Bulgarian Helsinki Committee initiated talks with the Ministry of Interior in March 2012.[110]

The fifth Sofia Pride was held on 30 June 2012 in Sofia and was the most successful pride parade ever organised in the country as more than 1,500 people took part in the march. The Pride was preceded by Sofia Pride Art Week and Sofia Pride Film Festival. A number of public figures, ambassadors and politicians took part in the event, which was backed up by a number v MEPs. For the first time the organisers did not have to pay for police protection. Shortly before the event an Orthodox priest suggested that the participants should be stoned. The participants addressed the Holy Synod of the Orthodox Church to dissociate itself from the threat.[111]

In June 2013 the sixth annual Sofia Pride event was scheduled to take place. The date, however, coincided with continuous anti-governmental protests in the centre of the city. After lack of uniformity among the organisers whether the march should take place as scheduled or postponed due to security reasons, it was postponed. The Bulgarian Helsinki Committee (BHC) (*Български хелзинкски комитет, БХК*), which was also involved in the organisation of Sofia Pride, issued a separate statement in which it disagreed with the decision to postpone the Pride march and left the organising committee of the Pride.[112] The BHC explained that the decision to postpone the event had been taken under pressure from Sofia Municipality and the Ministry of the Interior. Furthermore, the municipality warned that the Bulgarian Orthodox Church was expected to have an even stronger than usual counter-reaction against the Pride march, the reason being that 22 June 2013 was one out of four days in the 2013 church calendar dedicated to commemorating the dead. A group of activists joined the anti-government protests on the initial date and were attacked by a group of football fans.[113] Alongside with the initially planned march

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[109] Bulgaria, Bulgarian Helsinki Committee (*Български хелзинкски комитет*) (2012), *Annual Report – Human Rights in Bulgaria in 2011*, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/2011-en.pdf.

[110] Bulgaria, Bulgarian Helsinki Committee (*Български хелзинкски комитет*) (2012), Communication between Ms Margarita Ilieva, Legal Director of the Bulgarian Helsinki Committee and Mr Veselin Vuchkov, Deputy Minister of Interior, March 2012 (unpublished).

[111] Bulgaria, Sofia Pride 2012 Organisational Committee (*Организационен комитет на София Прайд 2012*) (2012), 'Official Statement of the Organisational Committee of Sofia Pride 2012', ('*Официално становище на организационния комитет на София Прайд 2012*'), Press release, 18 June 2012, available in Bulgarian at: http://www.bghelsinki.org/bg/novini/press/single/oficialno-stanovishe-na-organizacionniya-komitet-na-sofiya-prajd-2012/.

[112] Bulgaria, Bulgarian Helsinki Committee (BHC) (*Български хелзинкски комитет, БХК*) (2013), 'BHC Protest Against The Pressure of the Authorities for Cancellation of Sofia Pride 2013' ('*БХК протестира срещу натиска на властите за отмяна на „София Прайд" 2013'),* Open letter, 21 June 2013, available in Bulgarian at: www.bghelsinki.org/bg/novini/press/single/otvoreno-pismo-bhk-protestira-sreshu-natiska-na-vlastite-za-otmyanata-na-sofiya-prajd-2013/.

[113] Bulgaria, Sofia Pride (2013), 'A group of LGBT protestors were attacked by a group of football fans during the protests yesterday' ('*Група ЛГБТ протестиращи е била нападната от футболни привърженици по време на протестите вчера'*), 23 June 2013, available in Bulgarian at: http://sofiapride.org/2013/06/23/grupa-lgbt-protestirashti-e-bila-napadnata-ot-futbolni-priva-rzhenitsi-po-

in June, an art festival and a film festival took place as scheduled. The event eventually took place on 21 September and gathered around 600 people, a considerable decrease compared to the numbers from the previous year. This was the first edition of the event during which no acts of violence or other incidents were registered.[114] However, both in June and September two anti-pride manifestations took place in Sofia and a march in support of the traditional family took part in the city of Burgas (*Бургас*). The far-right organisation "Bulgarian National Union (*Български национален съюз*) also organised a petition for banning Sofia Pride and, allegedly, around 15,000 signatures were collected.[115] Additionally, on the previous day, the extreme right party Ataka (*Атака*) had submitted to the Parliament Secretary a proposal for amendments to the Criminal Code for incrimination of the public manifestation of homosexuality demanding 1 to 5 years imprisonment and BGN 1,000 – 5,000 (€ 511.29 – 2,556.46) fines.[116] On 30 January 2014 the proposed amendment was rejected by the Members of the Parliament.[117] Since 2011 other events began to be organised again annually on the occasion of the International Day against Homo-,Bi- and Transphobia (IDAHO) – 17 May. In 2011 three events were organised – a photo exhibition "Images against homophobia" was set up by the Sofia Pride Foundation (*Фондация „София прайд"*) in front of the Courthouse in Sofia; a video installation called "I am not a target"[118] showing personal testimonies of victims of homo-, bi- and transphobia and a bike rally under the slogan "Together against the homophobia" where more than 100 people took part, both organised by the "Deystvie" Organisation. In 2012 and 2013 other bike rallies were organised. In 2013 for the first time in the recent years other cities joined the commemoration of the IDAHO. In the city of Plovdiv (*Пловдив*) the Deputy Chief of Mission of the US Embassy in Sofia, Mr Bryan Dalton opened a photo exhibition of more than 600 photos, collected by the "LGBT Plovdiv" organisation under the motto of "Let's take homophobia out of the game". In the town of Stara Zagora (*Стара Загора*) a group of activists spread 150 informational brochures.

Other LGBT events in 2013 included the organisation for the first time of an LGBT film festival in Plovdiv in June. The film festival was organised by the LGBT Plovdiv organisation. On 14 June during a screening a group of local football fans attacked the place, where it was taking place and made physical damages to the technical equipment.[119]

In recent years there are an increasing numbers of events devoted to the LGBT community and because of the good relationship with the police authorities, no major incidents occur during them. At the same time all events raising LGBT issues tend to be small in scale with a very small number of participants. This is due to the huge lack of visibility of the LGBT community in the country and the overall hostility of the majority towards LGBT people. Thus, according to the results of the FRA 61 %

vreme-na-protestite-vchera/.

[114] Bulgaria, Sofia Pride (2013), Final Financial Report, 16 October 2013, available in Bulgarian at: http://sofiapride.org/2013/10/16/okonchatelen-finansov-otchet-na-sofiya-prajd-2013/.

[115] Bulgaria, Bulgarian National Union (*Български национален съюз*) (2013), 'A petition for banning the gay parade was submitted today to the Sofia Municipality' (*'Подписка за забрана на гей-парада бе внесена днес в Столична община'*), 5 June 2013, available in Bulgarian at: http://goo.gl/E84bMa.

[116] Bulgaria, National Assembly (2013), Draft laws, Draft Law on Amendments and Supplements of the Criminal Code (*Законопроект за изменение и допълнение на Наказателния кодекс*) submitted in the National Assembly on 20 September 2013, available at: http://parliament.bg/bills/42/354-01-58.pdf.

[117] Bulgaria, Dnevnik.bg (2014), "The MPs rejected the Ataka's proposal for jail for participating in gay parades" (*„Депутатите отхвърлиха искането на "Атака" за затвор за участие в гей паради"*), 30 January 2014, available in Bulgarian at: http://www.dnevnik.bg/bulgaria/2014/01/30/2230813_deputatite_othvurliha_iskaneto_na_ataka_za_zatvor_za/.

[118] Bulgaria, Youth LGBT Organisation Deystvie (*Младежка ЛГБТ организация „Действие"*) (2011), 'I am not a target' (*'Аз не съм мишена'*), Video installation, 17 May 2011, available in Bulgarian at: http://www.deystvie.org/proekti/az-ne-sum-mishena.

[119] Bulgaria, Inews.bg (2013), 'Homophobes attacked a festival in Plovdiv (*'Хомофоби нападнаха фестивал в Пловдив'*), 15 June 2013, available in Bulgarian at: http://goo.gl/5JcXF3.

of the respondents are never open about their LGBT background.[120] Furthermore, regardless of the reducing number of incidents during the pride marches and other LGBT-oriented events, there is a rise of the far-right rhetoric in the country as a whole, which is a further factor discouraging LGBT people to take part in community-based events.

[120] FRA (European Union Agency for Fundamental Rights) (2012), LGBT Survey, "4 levels of being open about LGBT background" – results for Bulgaria, available at: http://fra.europa.eu/DVS/DVT/lgbt.php?locale=EN&dataSource=LGBT&media=png&width=740&plot=inCountry&topic=1.+Daily+Life&question=openness_cat4&superSubset=1&subset=AllSubset&country=BG.

F. Criminal law

The Bulgarian Criminal Code (*Наказателен кодекс*) provides for criminal sanctions for people who use hate speech in a limited number of circumstances. These include hate speech, which incites hatred on the grounds of nationality, race and religion or incites discrimination on the basis of race. Article 162, para.1 envisages up to three years of imprisonment and a public reprimand for a person 'who propagates or incites racial animosity or hatred or racial discrimination'.[121] Article 164 envisages similar punishment and compulsory work for a person who propagates religious hatred.[122] According to the official statistics, no-one has been sentenced for such crimes for the 1997 – 2007 period.[123] No recent statistics is available.

The Criminal Code does not make homophobic hate speech a crime in any way. However, the Bulgarian system does make extensive use of 'administrative punishments', including some for hate speech. Under the PADA the Commission may ex officio find that an utterance constitutes harassment and impose a sanction on the author. In addition, the law makes possible the institution of proceedings before civil courts in cases of hate speech.[124]On 21 December 2013 the Minister of Justice and Vice Prime Minister Ms Zinaida Zlatanova announced a draft of a new Criminal Code.[125] As seen by the text, the general part of the draft law which is applicable to all criminal offences has no provision that provides for aggravating in the criminal responsibility if a crime is committed due to discriminative motives. This type of motivation is sanctioned only in few cases enlisted in the special part of the draft law. The draft law provides for aggravated and more severe punishment of homicide and bodily injures biased by the victim's protected ground amending the current provisions that only racist and xenophobic motives of the perpetrators would be considered. The definition of *protected ground* in the new draft law encompasses sexual orientation alongside with race, skin colour, national origin nationality, ethnicity, descent, religion, belief, health status, age or sex.[126] Gender identity remains problematic and is not included as protected ground. The Bill was introduced to the Parliament on 31 January 2014 but has not been voted still.

Articles 166 – 169 of the Draft Criminal Code[127] repeat the discriminatory and iniquitous separation of the criminal sexual abuse with a person "from the same sex" which are used by the current Criminal

[121] Bulgaria, Criminal Code (*Наказателен кодекс)* (2 April 1968), Art. 162, para.1, available in Bulgarian at: http://lex.bg/laws/ldoc/1589654529.
[122] Bulgaria, Criminal Code (*Наказателен кодекс)*(2 April 1968), Art. 164, available in Bulgarian at: http://lex.bg/laws/ldoc/1589654529.
[123] Bulgaria, National Statistical Institute (*Национален статистически институт*) (2007), , *Crimes and persons convicted 2006* (*Престъпления и осъдени лица 2006*), Sofia, National Statistical Institute.
[124] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Art. 5 and 71, para.1, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223. Article 71, para. 1, in connection with Art. 5 (in cases of homophobic hate speech), provides for the protection of victims of discrimination who did not file complaint before the Commission, allowing them to file a complaint before the civil courts. The victims can ask the court: 1. to establish the violation; 2. to enjoin the perpetrator to stop the violation and to restore the status quo ante and abstain from further violation; 3. to allow for the compensation of damages.
[125] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.
[126] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, Additional Provisions, § 1.22, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.
[127] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, Articles 166 – 169, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.

Code.[128] Furthermore, the definitions for these crimes contain even the term "homosexual activity". This is highly problematic as texts dealing with "homosexual activity" do not contain the aggravated circumstances of rape, as defined in Art. 164, para. 2, 3 and 4 of the Draft Criminal Code. Thus, according to Art. 166 of the Draft Criminal Code for a group "homosexual activity" with the use violence and committed by two or more persons, the maximum penalty is eight years deprivation of liberty, when the "ordinary" (heterosexual) rape can be punished by up to 15 years in prison. The Draft Criminal Code also repeats the current doctrine according to which sexual abuse against a minor from the same sex is punished with a less severe punishment than if the abused child is of the opposite sex.[129] The Draft Criminal Code also continues the archaic understanding that rape can be conducted only against a woman. Furthermore, such a doctrine does not stipulate the possibility a woman or a man to be raped because of their sexual orientation, gender identity or gender representation.

F.1. Hate speech and criminal law

Under the civil law PADA, hate speech, as well as non-verbal expressions of hatred, is governed by the concepts of harassment and incitement to discrimination. The PADA bans harassment on a number of grounds, including, explicitly, sexual orientation. Harassment, including harassment on sexual orientation grounds, is explicitly stated to constitute a form of discrimination.[130]

It is defined as unwanted conduct [on grounds of sexual orientation] expressed physically, verbally or in any other manner, having the purpose or effect of violating the dignity of a person and of creating a hostile, offensive or intimidating environment.[131] Therefore, harassment under the PADA encompasses unwelcome offending verbal and other homophobic expression, or hate speech in a broad sense. In addition, hate speech, including homophobic hate speech, is covered in certain cases by the ban on incitement to discrimination under the PADA. Incitement too, like harassment, is explicitly proclaimed as a form of discrimination under the PADA.[132] It is defined as the direct and deliberate encouragement, instruction, exertion of pressure or persuasion of someone to commit discrimination, where the inciting party is in a position to influence the incited one.[133] Therefore, it encompasses homophobic hate speech by influential parties who may be shown directly to promote discrimination against LGBT people.

Discrimination claims can be initiated before a court and before the Protection Against Discrimination Commission. Until February 2014 only one case in which homophobic hate speech has been initiated in court, making use of the civil law PADA provisions on harassment and incitement to discrimination. It concerned extremist homophobic propaganda by a right-wing political party leader and Member of Parliament, Volen Siderov. Mr Siderov was taken to court jointly by LGBT individuals and NGOs

[128] Bulgaria, Criminal Code (*Наказателен кодекс)*, 2 April 1968, Art. 157, available in Bulgarian at: http://lex.bg/laws/ldoc/1589654529.
[129] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, Articles 167, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.
[130] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Article 5, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[131] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Additional Provision, § 1.1, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[132] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Article 5, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.
[133] Bulgaria, Protection Against Discrimination Act (*Закон за защита от дискриминация*) (1 January 2004), Additional Provision, § 1.5, available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

specialising in LGBT rights and general human rights organisations over public statements he had made, demeaning homosexuals in general and calling for their exclusion from the political process. The claimants in the case alleged that these statements constituted both harassment on sexual orientation grounds and incitement to discrimination on sexual orientation grounds. The trial court in Sofia dismissed the case on factual grounds, failing to accept that the proof adduced by the claimants was sufficient to establish the facts of the impugned statements. The court made no pronouncement on the substantive issue, i.e. whether or not such statements constituted illegal hate speech. The failure of the court to deal with the substantive issue on evidential pretexts is symptomatic of a certain lack of will and firmness to tackle high-profile homophobic statements by a mainstream politician. The court's refusal to accept as conclusive the evidence produced by the plaintiffs is hardly defensible, given that the statements were made and recorded in Parliament and on TV broadcasts. The higher court (Sofia City Court)[134] held that the homophobic statements did constitute neither harassment, nor incitement to discrimination. Using the argument that there was no comparison between homogenic groups and this was why the statements did not constitute any form of discrimination the court misinterpreted the law. The misinterpretation was in the fact that harassment and incitement to discrimination as provisions in the law do not contain an element of comparison as the direct and indirect discrimination provisions do. The necessary elements that are to be discussed in the harassment cases are whether the behaviour in question is unwanted, humiliating the dignity of the gay people/complainants and whether this behaviour creates offensive and threatening environment for them. These issues were neither taken into account nor discussed by the court. To find evidence or reject the presence of incitement the court should have considered whether the statements of the defendant (politician) influence the audience directly and on purpose to regard gay people in a negative way and whether the politician is in position to influence the audience. The court did not even mention these issues in its decision. This decision was appealed before the Supreme Court of Cassation in October 2009. On 18 March 2010 the Supreme Court of Cassation dismissed the appeal and the decision of the Sofia City Court became final.[135]

As far as cases brought before the Protection Against Discrimination Commission are concerned, until 2009, there was one case raising an issue of homophobic speech. . It was brought by an NGO (BGO Gemini) as a public interest complainant against the *Duma* daily newspaper over an article alleged to incite discrimination against LGBT people. The case was settled, with the newspaper recognising that some of the language in the article in question was 'too extreme' and 'not bona fide', and expressly undertaking to abstain from publishing any similar material in the future. The settlement agreement was sanctioned by a decision from the PADC.

In another case before the PADC, brought by the same NGO, the complainant alleged that a local mayor's refusal to allow a public LGBT rights event constituted incitement to discrimination, as well as, cumulatively, discrimination. The reason was that a religious association, in which the mayor was directly involved, publicly issued a homophobic statement around the same time that the mayor's refusal to allow the LGBT event was made public in the media. A wave of homophobic statements being published ensued. However, neither the PADC, nor the two courts of appeal in the case ever discussed this allegation of incitement or made a ruling on it. Rather, they concentrated on the allegation of discrimination, with no mention of the incitement issue. The complainant NGO also failed to pursue the incitement matter. Thus, the proceedings in the case bear no reflection of hate speech as an issue.

[134] Bulgaria, Sofia City Court (*Софийски градски съд*), decision from 1 September 2009, case file № 285/2007, 1 September 2009.
[135] Bulgaria, Supreme Court of Cassation (*Върховен административен съд*), ruling № 266/2010, case file № 1938/2009, 18 March 2010.

The Bulgarian Activist Alliance (mainly consisting of journalists and other human rights activists) reacted with an open letter on 1 April 2009 against the hate speech by one of the speakers – Lora Krumova at Nova Television, one of the three national televisions. The letter protests against her behaviour violating the Media Ethic Code. The program was devoted to the FRA homophobia report on Bulgaria from 2008. None of the famous LGBT activists was invited to participate in the programme but the speaker announced that she had a problem with inviting homosexual people "famous with their unclear behaviour due to their homosexuality". She also expressed her hope that at least on the phone they would behave "like men".[136] As a reaction to the letter of the LGBT community the Swedish owners of the television apologised for this behaviour but the television itself did not.

Since 2010 there has been a growing jurisprudence of the Protection Against Discrimination Commission and the Supreme Administrative Court on cases of homophobic speech mainly because of the active involvement of two LGBT rights activists – Mr. Radoslav Stoyanov and Mr Dobromir Dobrev. Nine cases concerning homophobic speech in the 2010 – 2013 period were decided by the PADC. Another three cases, concerned personal insults and allegations for homosexuality which cases are also briefly discussed below.
In 2010 the PADC issued decisions on three cases concerning homophobic speech – two against the Weekend („*Уикенд"*) newspaper, and one against the Galeria (*„Галерия"*) newspaper. The first case concerned a publication in the Weekend newspaper entitled "Shame! Gay Scandal at CSKA" (*"Срам! Гей скандал в ЦСКА*) published on 26 September 2009.[137] The article concerned the case of a football player from the CSKA club, who allegedly was penalised for ruining the prestige of his club after the publication of a photo on Facebook, where the footballer was kissing another man. The PADC found that by highlighting the alleged sexual orientation of the football player and describing the story as a "shame", "disgrace" and "scandalous", the newspaper has created a hostile and offensive environment for all people with different sexual orientation, which constituted discrimination in the form of harassment and required that the paper's management develop and implement self-control rules and mechanisms in order not to allow discrimination.

In October 2010, the PADC issued another decision against the same newspaper – "Weekend" and fined the editor-in-chief and publisher of the newspaper, Mr Martin Radoslavov, with BGN 800 (€ 409) and advised the journalist who had prepared the article to abstain from "presenting unconfirmed and unproven facts and circumstances as factual truth," as well as "not to try to create stereotypes and negative attitudes towards the people with non-heterosexual and homosexual orientation led only by her aspiration for the sensational".[138] The case concerned an article, published on 3 September 2009 entitled "Sensation! The Belneyski's" Killer is a Homosexual"(*„Сензация! Убиецът на Белнейски е хомосексуалист"*) and alleged that the murderer of the Belneyski sisters, which case became well-known in the country, was homosexual. According to the PADC with the used title, the newspaper has suggested to the readers, that the alleged homosexuality of the murderer was the reason for committing the crime and thus has created a hostile and offensive environment.
In the third case from 2010, the PADC found that the "Galeria" newspaper has committed harassment and victimisation of the applicants Mr Dobromir Dobrev and Mr Radoslav Stoyanov, because of publishing a series of homophobic articles, including an interview between two public personalities and

[136] Furtunova, D. (2009), 'Intolerance in diversity (*'Нетърпимост в многообразието'*), Obektiv, 23 April 2009, available in Bulgarian at: http://www.bghelsinki.org/bg/publikacii/obektiv/daniela-frtunova/2009-04/netrpimost-sreshu-mnogoobrazieto/.
[137] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 126/2010, case file № 214/2009, 26 May 2010.
[138] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 178/2010, case file № 209/2009, 30 July 2010.

an article called "The Faggots Rose Up Against Galeria" (*„Педалите скочиха срещу Галерия"*) after the submission of the application before the PADC. [139] The Commission found discrimination and ordered the maximum fine 2,500 BGN (1,278 EUR) to the publisher of the newspaper and 500 BGN (255.65 EUR) to the chief editor. The decision was confirmed by the Supreme Administrative Court, which however quashed the imposed fines.[140]

In 2011 the PADC found discrimination in two other cases, submitted by Radoslav Stoyanov and Dobromir Dobrev. The first case concerned a publication in the Internet portal Sportline.bg entitled "A Young Boy Bends Down Before a Whole Team of Faggots" (*„Младо момче се наведе пред цял отбор педери"*) and with a sub-title "Homosexual Football Players Are Again Complaining About Homophobia in France" (*„Хомосексуалисти футболисти пак се жалват от хомофобия във Франция"*). [141] The PADC found that in the article the publisher has used a highly derogatory language to describe homosexual men which constituted discrimination in the form of harassment.
The second case, decided in 2011 was filed against the "Frog News" („Фрог нюз") Internet portal and concerned an article published by the website called "The Gay Agents among the Diplomats Were Hidden" (*„Скриха гейовете агенти в дипломацията"*). [142] The article contained some information about the alleged homosexual orientation of Bulgarian diplomats who were former agents of the communist secret service. The PADC found that by using pejorative and a biased language, the website has conducted discrimination in the form of harassment.

In 2012 the PADC continued to issue decisions for homophobic speech. On 2 March 2012 the PADC found that publication of an article, entitled "City Officials under the Same Roof with Gays" (*„Градски първенци под един покрив с гейове"*), the Plovdiv newspaper "Maritsa" (*„Марица"*) has acted discriminatory.[143] The Commission found that "the expressions and qualifications used in the article […] propagate animosity and violate the dignity and the honour of all people with different sexual orientation and create an abusive and hostile environment for them". The PADC imposed administrative fines to the company, that publishes the newspaper – 1,500 BGN (767 EUR) and its director 500 BGN (255.65 EUR). The Decision was confirmed in by the Sofia City Administrative Court.[144]

Again on 2 March 2012 the PADC issued another decision,[145] finding that a TV host Mr Yulian Vuchkov acted discriminatively by using highly derogatory homophobic language during his TV show, aired on 8 February 211. In an interview with the then Prime Minister Mr Boyko Borissov, Vuchkov explained that one of the pressing issues is that the government needs to consider is the "praise of perversion", that gay people "cannot demonstrate their gayness in a nasty manner" and that "this already happens in many TV channels and many concert halls". The decision of the PADC, however, was quashed by the Sofia

[139] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 182/2010, case file № 232/2009, 30 July 2010.
[140] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision No.10294/2011, case file № 12449/2010, 8 July 2011.
[141] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 151/2011, case file № 5/2011, 2 September 2011.
[142] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 152/2011, case file № 6/2011, 8 September 2011.
[143] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 58/2012, case file № 53/2011, 2 March 2012.
[144] Bulgaria, Sofia City Administrative Court (*Административен съд София-град*), Decision № 5821/2012, case file № 3894/2012, 1 November 2012.
[145] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 56/2012, case file № 37/2011, 02 March 2012.

City Administrative Court with a decision from 22 June 2012[146] and which decision was confirmed again by the Supreme Administrative Court.[147] Both courts found that the words of Mr Vuchkov were not offensive to anyone, as they constituted his own opinion.

A further case concerning homophobic speech was decided by the PADC on 18 June 2012. The case was initiated by Dobromir Dobrev and Radoslav Stoyanov against the Blitz.bg Internet portal because of an article entitled "The US Senate Allowed the Fags to Enrol in the Army" (*„Американският сенат разреши на обратните да служат в армията"*).[148] The PADC found that the article contained words and phrases that were of negative nature and were used in a manner inciting to intolerance towards non-heterosexual people. No fines were imposed to the portal's owner. The PADC, however, issued a compulsory administrative measure to the owner to restrain from further discrimination and to develop and implement self-control rules and mechanisms in order not to allow further discrimination.

Finally, on December 2013 the Supreme Administrative Court found that the famous Bulgarian TV director Andrey Slabakov has indeed acted discriminatively.[149] In a TV interview in 2011, he said that "[…] the spread of AIDS is not just because of the drug-addicts, which, we know that in some countries it is allowed for a person to take drugs, but the cigarettes are even more dangerous… Moreover, let's put aside that they widely spread AIDS, because not all gays are homosexual, as some of them are bi-. This does not work in the society's interest". The PADC[150] did not find Slabakov's words discriminatory, but the Supreme Administrative Court confirmed that Slabakov's words constituted discrimination.

In the reporting period, the PADC made decisions on three further cases, concerning sexual orientation, all of them, however, concerned personal insults against the applicants, alleging their homosexuality. One of them[151] was terminated because of procedure irregularities. In the second one, the PADC found that it was not in its competence to deal with personal insults.[152]
The third case was lodged before the PADC by the leader of the Political Party "Order, Law and Justice" (*„Ред, законност и справедливост"*) against the leader of another political party "Ataka" and a TV presenter. The Commission did not find discrimination[153] and its decision was later confirmed by the Supreme Administrative Court.[154]

In the 2010 – 2013 period a number of offensive comments towards the LGBT community were made, which makes as a whole the atmosphere in the public space in the country hostile towards the LGBTI

[146] Bulgaria, Sofia City Administrative Court (*Административен съд София-град*), Decision № 3451/2012, case file № 2958/2012, 22 June 2012.
[147] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision № 16558/2012, case file № 12446/2012, 27 December 2012.
[148] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 156/2012, case file № 7/2011, 18 June 2012.
[149] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision № 16554/2013, case file № 27/2013, 11 December 2013.
[150] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 121/2012, case file № 133/2011, 26 April 2012.
[151] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 108/2011, case file № 99/2010, 13 June 2011.
[152] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision from 2010 (no date and decision number is provided), case file № 80/2010.
[153] Bulgaria, Protection Against Discrimination Commission (*Комисия за защита от дискриминация*), Decision № 58/2011, case file № 39/2010, 22 March 2011.
[154] Bulgaria, Supreme Administrative Court, three-member jury (*Върховен административен съд, три-членен състав*), Decision No.4846/2012, case file № 5700/2011, 3 April 2012.

people.

F.2. Violence

As in the case of hate speech, the Bulgarian Criminal Code envisages criminal sanctions for hate-related violence, but only on the grounds of race, ethnic origin, religion or political opinion. Article 162, paragraphs 2-4 stipulate different terms of imprisonment for the use of violence against individuals because of their race, ethnic origin, religion or political opinion and for forming, leading or participating in an organisation or group that aims to commit such crimes.[155] Article 163 envisages different terms of imprisonment for people who participate, lead or instigate crowds formed to attack groups of people, individuals or their property because of their nationality or race.[156] As described above, in December 2013 the Government announced a new Draft Criminal Code[157] which encompasses sexual orientation as a protected ground. Gender identity however, still remains outside the scope of the Criminal code. None of these provisions have been enforced recently and, according to the official statistics, noone has been punished for such acts for the past ten years. No recent statistic is available.

Outside this limited material scope, nothing in Bulgarian criminal justice legislation prompts the authorities to take into consideration and to investigate possible motives of hatred in the perpetration of other crimes. The European Court of Human Rights in Strasbourg issued two judgments against Bulgaria, finding violations of Articles 2 and 14 of the ECHR for the failure of the authorities to investigate and prosecute racially-motivated offences and to make the required distinction of these offences from ordinary crimes. In the case of *Nachova and others v. Bulgaria*[158] these failures arose in the case of a racially-motivated offence by public officials and in the case of *Angelova and Ilieva v. Bulgaria*[159] these failures came about in the case of a racially-motivated offence perpetrated by private assailants.

Some cases of homophobia-motivated violence have occurred in recent years (see chapter E Freedom of Assembly). However, there may be many more such incidents, as the victims do not, as a rule, report them.

There is a clear stigma and prejudice against people with different sexual orientation in Bulgarian society. The stigma results in a very strong determination by the victims not to identify themselves as LGBT. Thus, the cases of violence motivated by homophobic prejudices are never reported to the authorities and are very seldom reported to NGOs.

The very few cases reported to the NGOs are communicated under the strict understanding that the privacy of the victims will be respected and that personal data related to the case will not be divulged. Thus, we are not in a position to provide any details of particular cases.

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[155] Bulgaria, Criminal Code (*Наказателен кодекс)*, (2 April 1968), Art. 162, para. 2-4, available in Bulgarian at: http://lex.bg/laws/ldoc/1589654529.

[156] Bulgaria, Criminal Code (*Наказателен кодекс)*, (2 April 1968), Art. 163, available in Bulgarian at: http://lex.bg/laws/ldoc/1589654529.

[157] Bulgaria, Criminal Code – Draft law (*Проект за Наказателен кодекс),* published on 21 December 2013 for public consultations, available in Bulgarian at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1139.

[158] European Court of Human Rights (ECtHR), Grand Chamber, *Nachova and Others v. Bulgaria*, № 43577/98 and 43579/98), 6 July 2005.

[159] European Court of Human Rights (ECtHR), *Angelova and Ilieva v. Bulgaria*, № 55523/00, 26 July 2007.

Between 2002 and 2004, organised attacks against LGBT venues and clubs were not infrequent in Bulgaria.[160] Usually they were spontaneous attacks in big cities by small groups of young people under the influence of alcohol. In 2006 such mass attacks were not as prevalent as before and the few incidents were on a very low scale. In 2007 there were no such incidents.

In 2006 there were several cases of organised violence against individual victims.[161] In many of these cases the perpetrators used the internet to identify the victim as LGBT and to organise themselves. The identification of the LGBT people as a future target of homophobic violence is usually done using the instant message and chat facilities on the internet, as well as dating-service web portals. The perpetrators pretend to be LGBT people in search of a partner. This method is particularly used in smaller towns and cities.

The reaction of the authorities is usually inadequate. They do not accept or file the complaints or are reluctant to believe in the existence of a homophobic motive for the crime. The victims themselves are often unwilling to file complaints due to the societal stigmas they face. When added to the lack of trust in the authorities felt by the LGBT victims, it results in an absence of any criminal proceedings against the perpetrators.[162]

Only one case of homophobia-motivated violence was reported in 2007. In November 2007 two lesbian girls were attacked in the late evening and suffered physical injuries. The perpetrators were described as two "mob thugs" (*„мутри"*). The victims were known for not hiding their relationship in public places. The homophobic motivation for the crime was clear also because of the offensive language used during the attack. At time of writing the authorities had not started investigating the case.[163] The NGO which was the source of this piece of information is not active anymore. To the best knowledge of the reporter no legal case was ever brought regarding the assault. It is also unclear whether there was any investigation of the incident at all.

There were also cases of the police profiling LGBT people in stop-and-search activities around known LGBT venues and clubs. In some cases the profiling amounted to clear harassment, since some police officers besieged some of the clubs on a daily basis. In 2007 this practice concentrated around Stamboliysky blvd. in Sofia, where most of the LGBT clubs and lounges are located.

There were also a few reports of police profiling and verbal abuse and harassment by police officers towards trans-sexual people. The officers usually stop all such people to check their ID cards and to harass them under the pretext that the personal information collected about them contains contradictions, as a result of their gender reassignment.

Three days prior to the Gay Pride Parade on 27 June 2009, some social networks reported that LGBT people were attacked with Molotov cocktails during the night on 24 June 2009.[164]

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[160] European Network Against Racism (ENAR) (2006), *Shadow Report: Bulgaria 2006*, p. 18, available at: http://cms.horus.be/files/99935/MediaArchive/national/Bulgaria_2006.pdf.

[161] Bulgaria, Bulgarian Gay Organisation Gemini (*Българска гей организация „Джемини"*), www.bgogemini.org. The NGO and the website are not active anymore.

[162] European Network Against Racism (ENAR) (2006), *Shadow Report: Bulgaria 2006*, available at: http://cms.horus.be/files/99935/MediaArchive/national/Bulgaria_2006.pdf.

[163] Bulgaria, Bulgarian Gay Organisation Gemini (*Българска гей организация „Джемини"*), www.bgogemini.org. The NGO and the website are not active anymore.

[164] Bulgaria, Girls Gone Wise (2009), 'The Fear does not have face' ('*Страхът няма лице'*), 25 June 2009, available in Bulgarian at: http://girlsgonewise.wordpress.com/2009/06/25/strahyt-nqma-lice/.

In 2010 two young men were arrested for the murder of Mihail Stotyanov – a 26-year old man who was brutally killed in 2008 in the Borissova Gradina (*Борисова градина*) park in Sofia. According to the Prosecutor's Office, the youths wanted to cleanse the park from gays. The investigation of the murder was extremely slow and the case was finally submitted before a court in 2013 after the case had been returned two times to the Prosecutor's Office.[165] As of February 2014 the case is pending before the Sofia City Court and hearings are being held.[166]

In the 2010 – 2013 period most of the reported incidents that occurred were connected to the pride parades organised annually in Sofia and also to other public events, which were described in Chapter E – Freedom of Assembly.

On 20 March 2011, two 22-year old men were brutally beaten by a group of neo-Nazis in the Borissova Gradina park. In the early afternoon, a group of eight men in black hoods attacked the victims without a causes they were walking down the central alley in the park. According to one of the victims the reason was that one of the men had pink hair.

On 18 June 2011 after the end of the Sofia Pride march five volunteers of the Pride – two young women and three young men, were attacked in a small street in Sofia and beaten by a group of 4-5 people. During the investigation the police ceased video recordings from the moment of the attack. Though repeated interviews with the victims, no perpetrators have been identified and the pre-trial investigation was officially suspended on 28 August 2012.

In 2012, regardless of the tougher security measures, immediately after the 2012 Sofia Pride march, oe of the participants was attacked. The 25-year old man was knocked down on the ground and was kicked by three assailants. The victim, however, refused to press charges because of the lack of belief that the perpetrators would be found.

In June 2012 Amnesty International issued a report on homophobic and transphobic hate crimes in Bulgaria. In it the organisation expressed concerns about the deficiencies in Bulgaria's legal framework for combating these crimes and that the police does not investigate them promptly and with due diligence.[167]

In 2013 minor incidents happened during a demonstration of LGBT activists on 22 June 2013, when the Sofia Pride march was supposed to take place before it was postponed. On 14 June 2013 football fans attacked and disturbed a film screening in the town Plovdiv, which was organised as a part of an LGBT-themed film festival.

Given that 31 % of the respondents in the 2012 FRA LGBT survey report having been physically or sexually attacked or threatened[168] on one hand, and the very small number of known incidents, on the

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[165] Bulgaria, Bulgarian Helsinki Committee (*Български хелзинкски комитет*), 'Five years later the lawsuit for the murder of Mihail Stoyanov enters the court', (*'Пет години по-късно делото за убийството на Михаил Стоянов влиза в съдебна зала'*), Press release, 1 October 2013, available in Bulgarian at: http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-sled-5-godini-deloto-za-ubijstvoto-na-mihail-stoyanov-vleze-v-sdebna-zala/.

[166] Bulgaria, Sofia City Court (*Софийски градски съд*), case № 3766/2013. As of 27 February he case is still ongoing.

[167] Amnesty International (2012), *Changing Laws, Changing Minds: Challenging Homophobic and Transphobic Hate Crimes in Bulgaria*, EUR 15/001/2012, London, June 2012, available at: https://www.amnesty.org/en/library/info/EUR15/001/2012/en.

[168] FRA (Europen Union Agency for Fundamental Rights) (2012), LGBT Survey, "In the last 5 years, have you been:

other, it is evident that there is a very serious lack of reporting of such incidents. This is so mainly because crimes against LGBT people or those perceived to be LGBT cannot be addressed by the police and the judiciary as hate crimes due to gaps in the legislation.

physically/sexually attacked or threatened with violence at home or elsewhere (street, on public transport, at your workplace, etc) for any reason?" – results for Bulgaria, available at: http://fra.europa.eu/DVS/DVT/lgbt.php?locale=EN&dataSource=LGBT&media=png&width=740&plot=inCountry&topic=3.+Violence+and+harassment&question=f1_a&superSubset=1&subset=AllSubset&country=BG.

G. Transgender issues

The domestic anti-discrimination legislation (the PADA mentioned above in Chapter A, Implementation of Employment Directive 2000/78/EC), which bans discrimination on sexual orientation grounds, as well as on any other ground, makes no mention of transgender people. As no legal cases have successfully been brought under anti-discrimination legislation on behalf of transgender people and no case law exists to interpret the legislation's applicability to them. Therefore, anti-discrimination law is unspecific concerning transgender people, so far giving no indication as to whether discrimination against them is to be considered on sexual orientation grounds or on grounds of gender. As a result, transgender people are insufficiently protected under Bulgarian anti- discrimination law. However, it may be surmised that, as the PADA prohibits discrimination on an open-ended list of grounds, with the only requirement being that such grounds are stipulated under an international treaty or legislation, transgender status could be construed under case law as 'another ground', provided that there is at least one explicit mention of it under law. To date this is not the case, but it may have become so by the time domestic judges or equality body adjudicators come to deal with transgender cases.

A draft law for the amendment of the PADA has been submitted to the Parliament by the Council of Ministers which envisages adding a new provision, according to which the "sex" protected ground would include sex reassignment cases.[169] The Bill was adopted by the Government on first reading on 16 January 2014, however, when it was voted for the second time on 28 February 2014, the proposition was abolished.

One case concerning discrimination on the basis of gender identity has been identified. The case was lodged before the Protection Against Discrimination Commission (PADC) by a person who changed his gender, name and identification documents but when attempted to obtain a copy of his secondary education diploma in accordance with his new name and gender, due to the fact that he lost his original document. The applicant, however, could not obtain the copy, because the school authorities could only issue a duplicate of a document with the same personal data. This was confirmed by the Ministry of Education and Science.[170] No information about this case was provided by the PADC, despite an official inquiry for all decision concerning LGBTI persons sent to the Commission and the following numerous phone attempts of the reporter to contact the Commission by phone.

There is no legal definition of the concept of transgender/ transsexuality in any Bulgarian law. Bulgarian legislation also lacks any specific regulations and procedures concerning the establishing of the status of a person who wishes to undergo sex reassignment surgery or hormonal treatment to that effect.

The sole document containing mention of this term is a regulation issued by the Ministry of Defence (*Министерство от отбраната*).[171] This regulation treats transsexuality as a sexual disorder, making transgender people unfit for military service.[172] For the purposes of this regulation, the establishment of

[169] Bulgaria, National Assembly (2013), Draft laws, Draft Law on Amendments and Supplements of the Protection Against Discrimination Act (*Законопроект за изменение и допълнение на Закон за защита от дискриминация*) submitted in the National Assembly on 25 November 2013, available at: http://parliament.bg/bills/42/302-01-46.pdf.

[170] Bulgaria, Medaipool.bg (*Медиапул.бг*) (2011), 'Sex change left a person without a diploma' (*'Смяна на пола остави човек без диплома'*), 29 April 2011, available in Bulgarian at: http://www.mediapool.bg/smyana-na-pola-ostavi-chovek-bez-diploma-news178899.html.

[171] Bulgaria, Ministry of Defence (*Министерство на отбраната*) (1996), 'Regulation №. OX-217 on the announcement of a list of disorders and physical deficiencies' (*'Заповед № ОХ-217 за обявяване на разписание на болестите и физическите недостатъци'*), 8 June 1996.

[172] Bulgaria, Ministry of Defence (*Министерство на отбраната*) (1996), 'Regulation №. OX-217 on the announcement of a

transsexuality requires the gathering of "an objectified anamnesis of the life of the person certified clearly showing that the psychopathologic manifestations are of a lasting and continuous nature".[173] In view of collecting objective information, the said regulation refers to the following sources: school records, employment records, health and performance records, psychological tests, conclusions by a medical institution. This regulation is still in force. Its existence poses a problem with regard to qualifying this condition as a psychological problem or a physical disorder.

A review of the National Framework Agreements (*Национални рамкови договори*)[174] for the period 2000 – 2007 reveals a total lack of commitment on the part of institutions providing medical care for Bulgarian citizens of transsexual identity. Medical activities aimed at hormonal treatment of transsexual individuals and sex reassignment surgical interventions are not provided for by the National Health Fund (NHF) (*Национална здравноосигурителна каса, НЗОК*).

In December 2013 the reporter (the Bulgarian Helsinki Committee) sent official inquiries for information to the National Health Insurance Fund (NHIF) and the Ministry of Health (MoH) about the existence of clinical paths paid by the NHF and that cover hormonal or operative treatment of trans people. In its answer the NHIF concluded that in accordance with the contemporary understanding of human rights "the right of everyone to a sexual orientation and the right of self-determination of one's gender identity (different from the biological one) should not be considered as a disease". Furthermore, according to the NHF the information of the existence of clinical paths is a public information, which is published annually in the National Framework Agreements.[175] On the other hand, according to the experts of the Ministry of Health "sex-reassignment surgeries can be performed under the regulation of the general package of health activities, which are paid by the National Health Insurance Fund and are an element of the clinical paths of urology and obstetrics and gynaecology".[176]
After a thorough examination of the National Framework Agreement for 2014,[177] however, the reporter

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list of disorders and physical deficiencies' (*'Заповед № ОХ-217 за обявяване на разписание на болестите и физическите недостатъци'*), 8 June 1996. The Regulation does not list all diseases – somatic, psychological and behavioural disorders rendering an individual unfit for military service. This is not an automatic conclusion but one based on objective data on the actual manifestation of the condition. The Regulation stipulates that "any disorders of a sexual nature are to be established in a military medical institution using Kinsey's 6-level scale and by gathering objective information".

[173] Bulgaria, Ministry of Defence (*Министерство на отбраната*) (1996), 'Regulation №. ОХ-217 on the announcement of a list of disorders and physical deficiencies' (*'Заповед № ОХ-217 за обявяване на разписание на болестите и физическите недостатъци'*), 8 June 1996, p. 302.

[174] Bulgaria, National Health Insurance Fund (*Национална здравноосигурителна каса*) (2005), *National* framework agreement between the National Heath Insurance Fund, the Bulgarian Medical Association and the Association of the Dentists in Bulgaria, 2006 (Национален рамков договор между Националната здравноосигурителна каса и Българския лекарски съюз и Съюза на стоматолозите в България, 2006 г.), Art. 1, para. 1, available in Bulgarian at: http://www.nhif.bg/c/document_library/get_file?p_l_id=14849&folderId=15945&name=DLFE-1142.zip. "The subject of this National Framework Agreement (NFA) is the rights and obligations concerning medical and dental care, within the framework of Art. 55 of the Law on Health Insurance (LHI), regarding: 1. the National Health Insurance Fund; 2. the Bulgarian Medical Association and the Association of Dentists in Bulgaria; 3. the medical assistance providers; 4. the dental assistance providers; 5. the liable health insured individuals." The 2000 – 2007 National Framework Agreements (between the State Health Insurance Agency and the unions of physicians, dentists and other specialists) mostly open with an identical Article 1 stating the subject of the agreement.

[175] Bulgaria, National Health Insurance Fund (*Национална здравноосигурителна каса*), Information provided in accordance with a decision № RD-19-1/2 January 2014 of the NHIF (*Информация предоставена въз основа на Решение № РД-10-1/2 January 2014 на НЗОК, подписана от д-р Динчо Генев, подуправител на НЗОК*), signed by Mr Dincho Genev, MD, deputy-director of the NHIF, undated.

[176] Bulgaria, Ministry of Health (*Министерство на здравеопазването*), Reference on the questions placed in a request with an incoming number 93-00-01/18 December 2013 (*Справка по поставените въпроси в заявление с вх. № 93-00-01/18 December 2013*), undated and unsigned.

[177] Bulgaria, National Health Fund (*Национална здравноосигурителна каса*), National Framework Agreement 2014 for medical activities (*Национален рамков договор 2014 за медицински дейности*), Annex № 16 "Clinical Paths" (*Приложение № 16 „Клинични пътеки"*), available in Bulgarian at: http://www.nhif.bg/c/document_library/get_file?uuid=4f34ba45-bee4-4821-9606-0efc0e5e0369&filename=16-Prilojenie-MD_28-01-2014%20(2).zip&groupId=10139.

did not find any clinical paths suitable for trans people seeking to undergo sex-reassignment surgery or hormonal therapy.

Bulgaria also lacks specific regulations as regards diagnosis, criteria for good practices or rules to guide the undertaking of hormonal treatment and/ or surgery, although other forms of medical treatment are defined with great detail in the legislation.[178] There are no provisions regulating the observation and tracking of the individual's medical condition following interventions of this type. There is no medical standard to guarantee compliance with certain best practices for individuals undergoing procedures of gender reassignment.

Despite the aforementioned legislative gaps regarding medical interventions and follow-up activities concerning gender reassignment, Bulgarian law does not prohibit hormonal treatment and sex reassignment surgery. This can be deduced from the Bulgarian Personal Documents Act (*Закон за българските лични документи*) where Article 9, paragraph 1,[179] specifically stipulates the obligation of individuals who have altered their gender to apply for new identity documents. The Rules for Issuing of Bulgarian Personal Documents (*Правилник за издаване на българските лични документи*) also contain such a provision. According to Article 20, paragraph 6 of the Rules, in order for an identity document to be issued to an individual following gender reassignment, an "official document issued by the relevant competent authorities" must be provided.[180]

Thus, Bulgarian legislation does recognise transsexuality as a phenomenon leading to specific changes in an individual's life. But because medical aspects of gender reassignment are not legally provided for several risks are at hand:

- Proceeding to medical manipulations related to gender reassignment without clear establishment of the individual's condition;
- Performance of medical manipulations not as a result of medical, emotional or psychological necessity on the part of the individual but based on the financial interest of medical staff;

[178] For the purposes of comparison, we shall take the following excerpt from the National Framework Agreement concerning medical issues resulting from hysterectomy, which contains a detailed review of the methods of treatment and the risks involved, as well as other relevant details: Bulgaria, National Health Insurance Fund (*Национална здравноосигурителна каса*) (2003), 'Annex № 4 to the National Framework Agreement 2002, Clinical paths - № 19 Operations for a total extirpation of the uterus with or without its appendages in case of lack of data for pre-treatment oncological diseases' (*Приложение № 4 към Национален рамков договор 2002, Клинични пътеки - № 19 Операции за тотална екстирпация на матката със или без нейните придатъци в отсъствие на долечебни данни за онкологичнo заболяване*), 31 March 2003.In the event of the removal of the ovaries where these are still functioning, conditions may arise which will require hormonal treatment. In the case of abdominal access, the surgery must be performed under full anaesthesia and would normally last between one and two hours. In the case of vaginal access, a more frequent approach would be local (or spinal) analgesia. In view of modern conditions, complications and the risks to health and life of this surgery should be minimal but cannot be fully excluded. Possible post-surgery complications involve bleeding, injuries to neighbouring organs, possible disturbance of vital functions related to the application of anaesthesia and/or the existence of accompanying disorders. During the post-surgery period, there is a possibility of infectious complications concerning the abdominal cavity, the surgery wound or other organs, including thrombosis, arterial or venal vascula and related consequences. Complications during the surgery itself or the post-surgery period may delay the recovery or incur permanent consequences. Blood or other biological product transfusions may become necessary before, in the course of, or following the surgery. The options for influencing the conditions requiring uterus extirpation through alternative treatment methods vary for each specific medical condition." Available in Bulgarian at: http://goo.gl/rTMFoK.

[179] Bulgaria, Bulgarian Personal Documents Act (*Закон за българските лични документи*) (1 April 1999), Art. 9, para. 1 (adopted on 16 October 2009): "In case that the name, personal identification number, gender, citizenship are changed or when essential and durable alterations of the face of the person are in place, the person is obliged to obtain new identity documents within 30 days after the changes or alterations." Available in Bulgarian at: http://lex.bg/laws/ldoc/2134424576.

[180] Bulgaria, Rules for Issuing of Bulgarian Personal Documents (*Правилник за издаване на българските лични документи*), Art. 20, para. 6, 8 February 2010, available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2135663268.

- Medical malpractice which would never be officially revealed; and
- Inconsistency of follow-up rehabilitation or complete lack thereof.

The Bulgarian Personal Documents Act and the regulations for its application introduce the requirement to change identity documents following gender reassignment, as well as the rules on how this should be done. In order for a new identity document to be issued, the individual will need to present an "official document confirming the alteration, as well as a certifying document from the local municipal administration to substantiate the change in the personal registration card, where the amendment was not entered in the National "Population" Database".[181] Such official document can be only a court decision in the case of gender reassignment. According to the Citizen Registration Act (*Закон за гражданската регистрация*) the change of the name in case of gender reassignment is to be done only through a civil court proceeding.[182] The proceeding can be initiated (according to Article 19, paragraph 1 of the Citizen Registration Act) when there is a "significant change of circumstances" and gender reassignment can be presented as such. In order to establish the presence of such circumstances, full evidence must be presented to the court. Also, because of the name-gender interrelation, two petitions must be filed with the court. Therefore, along with the change of name, a request must be filed to legalise the the gender change.[183] In the process of substantiation, a myriad of evidential material is gathered including but not limited to: sexological and psychological conclusion by a sexology psychologist familiar with the individual's condition; a document from the local psychiatric clinic certifying that the individual has no record; criminal record; witness testimony, etc. Gender reassignment also entails amendment to the Personal Identification Number. Transsexual individuals are then expected to proceed to amending trade registrations (if any), have their employment contract (if any) re-endorsed and have a new driving licence and a new passport issued. There is currently no special provision for the entry of an amendment to the birth certificate. Insofar as an individual's sex is one of the elements which must be entered for citizen registration[184] and present on the birth certificate,[185] there should also be special provisions for amendments to the birth certificate. As a whole, there is a gap concerning specific regulations, which may lead to various difficulties for individuals who undergo gender reassignment surgery and controversial court practices in the event of court proceedings and rulings.

In 2011 an important amendment to the Citizen Registration Act was adopted. Before that change the municipal authorities did not issue a new birth certificate after a court approval of a name and gender reassignment but included the new information in a specific part of the Act called "Remarks" and thus, the information about the old gender remained visible in the official birth certificate. Since the inclusion

[181] Bulgaria, Rules for Issuing of Bulgarian Personal Documents (*Правилник за издаване на българските лични документи*) (8 February 2010), Art. 20, para. 3, , available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2135663268.

[182] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409. The Citizen Registration Act provides for some exceptions from this rule but the change of name due to gender alteration is not among these exceptions.

[183] Bulgaria, Rules for Issuing of Bulgarian Personal Documents (*Правилник за издаване на българските лични документи*) (8 February 2010), Art. 20, para. 6 available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2135663268. Art. 20, para. 6 of the Rules for the Issuing of Bulgarian Personal Documents stipulate that, in order for a document with an amended entry under sex to be issued, an "official document by the relevant competent authorities" must be presented. Insofar as no other document is specified, this document would therefore have to be issued by a court and have the power of an effective court decree.

[184] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), Art. 8, para. 1, rule 3, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409 .

[185] Bulgaria, Regulation No. RD-02-14-226 from 7 February 2000 of the Minister of Regional Development and Public Matters and the Minister of Justice on approving the sample forms of civil status certificates (*Заповед № РД-02-14-226 от 7 February 2000 г. за утвърждаване на образци на актове за гражданско състояние, издадена от министъра на регионалното развитие и благоустройството и министъра на правосъдието*), 14 April 2000, available in Bulgarian at: http://goo.gl/bJM966. In accordance with the Regulation in addition to the individual's names, the birth certificate must also contain his or her biological sex.

of Article 81a in the Citizen and Registration Act on 20 May 2011, however, this was changed and at the moment, when a new birth certificate is being issued, the old one is nullified.[186]

Bulgaria's national legislation lacks specific provisions for matters relating to divorce, marriage and inheritance for transsexual individuals. According to Article 7 of the Family Code, a marriage is contracted by mutual consent between a man and a woman. On 01 October 2009 new Family Code was adopted in Bulgaria, which however did not make any changes in the different-sex definition or marriage.[187] Normative acts regulating the contracting of marriages do not stipulate restrictions to the marriage following gender reassignment, as long as the partners are of different sex at the time of the marriage. If the partners are formally of the same sex, there are no legal grounds for entering a marriage. In cases of gender reassignment of an already married person, the marriage should be dissolved – due to the presence of objective grounds (according Article 99, paragraph 2 of the Family Code) – two people of the same gender are not allowed to stay married. In this case investigation of the issue of guilt in the termination of the marriage does not take place. However, there is no specific legislative act provided for to this effect, which means individuals who have changed gender are faced with the unpredictability of court proceedings. The corresponding regulation in the adopted in 2009 new Family Code – Article 49, paragraph 3 does not contain the "the presence of objective grounds" clause for dissolving marriage.[188]

Bulgarian legislation poses no obstacles or limitations to transsexual individuals as regards inheritance. Nevertheless, in certain circumstances, if there are any impediments to the partners' civil marriage, they will be in a disadvantaged position regarding inheritance from the deceased partner or partner's relatives, in comparison with a heterosexual couple in a civil marriage. There were no new developments regarding legal regulations about transgender issues during the period 2007 – 2009. LGBT organisations or activists do not have any public discussions about the issue related to transgender people and the research did not find any evidence of activities of any organisations regarding lobbying, legislative amendments or policies related to transgender people.

NGO lawyers and the jurisprudence of the Sofia Regional Court and the Protection Against Discrimination Commission were interviewed in searching cases of transgender people and no cases had been found.

In 2012 The Bilitis Resource Foundation (*„Фондация „Ресурсен център Билитис"*) commissioned a report[189] on the sex change of trans and intersex people in Bulgaria. The report was prepared on the basis of 13 court decision for sex change from the 2000 – 2012 period, as well as on the basis of interviews with transgender people, attorneys-at-law and sexologists. According to the report there is a positive development in the jurisprudence since 2000, namely the fact that the decisions from the recent years "put the accent on the self-awareness and self-identification of the person, certified through a sexological and psychiatric expert reports", which have been found to be necessary for the court to consider a case for a sex and name change. Thus, while the Pazardzhik District Court rejected an application for a sex

[186] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), Art. 81 a (adopted on 20 May 2011), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409.

[187] Bulgaria, Family Code (*Семеен кодекс*) (1 October 2009), Art.5, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135637484.

[188] Bulgaria, Family Code (*Семеен кодекс*) (1 October 2009), Art. 49, para. 3, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135637484.

[189] Bulgaria, Bilitis Resource Foundation (*„Фондация „Ресурсен център Билитис"*) (2012), Sex Change of Trans and Intersex People in Bulgaria (*Смяна на пола на транс и интерсексуални хора в България*) , available in Bulgarian at: http://178.254.232.11:4801/dacyron/Strategy_Gender_Reassign_BG_Summary.pdf.

change of the applicant, on the basis that she. Having been born as a man, did not have female reproductive abilities and that the biological factors should prevail over the psychological ones when one's sex is being determined[190], the negative decision was later quashed by the Supreme Court of Cassation (*Върховен касационен съд*). In it's the decision the latter found that "the most important metamorphosis in a person's life is the change in his social role" and added that the ability to give birth is not a decisive factor in the determination of a person as a woman, having in mind that no all biological women have the ability to give birth.[191]

The report also found that according to the jurisprudence no previous gender-reassignment surgery is required and no future imposition for undergoing one is being required by the courts. Furthermore, it found that there is no uniform practice on whether hormonal treatment is required as a perquisite for a positive court decision.

The report ends with specific recommendations towards the authorities in the sphere of the rights of trans and intersex people.

[190] Bulgaria, Pazardzhik District Court (*Районен съд Пазарджик*), Decision on case file № 1055/2001, 25 April 2003.

[191] Bulgaria, Supreme Court of Cassation (*Върховен касационен съд*), Decision on case file № 310/2004, 17 December 2004.

H. Intersex

As is the case with transgender people the domestic anti-discrimination legislation (the PADA mentioned above in Chapter A, Implementation of Employment Directive 2000/78/EC), which bans discrimination on sexual orientation grounds, as well as on any other ground, makes no mention of intersex people. As yet no legal cases have been brought under anti-discrimination legislation on behalf of intersex people and no case law exists to interpret the legislation's applicability to them. Therefore, anti-discrimination law is unspecific concerning intersex people, so far giving no indication as to whether discrimination against them is to be considered on grounds of gender or a disability. As a result, intersex people are insufficiently protected under Bulgarian anti- discrimination law. However, it may be surmised that, as the PADA prohibits discrimination on an open-ended list of grounds, with the only requirement being that such grounds are stipulated under an international treaty or legislation, intersex status could be construed under case law as 'another ground', provided that there is at least one explicit mention of it under law.

No non-discrimination policies that deal with intersex discrimination have been identified.

In accordance with Article 45 of the Citizen Registration Act (*Закон за гражданската регистрация*),[192] the birth certificate contains information on the gender of the new-born. A gender marker is also included in the personal identification number of each Bulgarian citizen, which is also a mandatory requisite of the birth certificate. Under the same Act, the birth certificate has to be issued no later than 7 days after the day of birth.[193]

According to the aforementioned report of the Bilitis Resource Center Foundation, the common practice is that intersex people undergo irreversible surgeries and hormonal therapies for sex-reassignment in a very early childhood. The report cites the position of leading specialists in endocrinology, according to whom after the implementation of an adequate medical treatment and a subsequent hormonal treatment, after the removal of the intersex condition, a person acquires conditions for a normal socialization. [194]

Intersex conditions are being treated in Bulgaria in accordance to the Ordinance № 32 of 30 December 2008 for the approval of Medical Standards "Obstetrics and Gynaecology (*Наредба № 32 от 30 декември 2008 г. за утвърждаване на медицински стандарт "Акушерство и гинекология"*)[195] and Ordinance № 6 of 10 February 2005 on the approval of Medical standards "Endocrinology and Diseases of the Metabolism" (*Наредба № 6 от 10 февруари 2005 г. за утвърждаване на Медицински стандарт "Ендокринология и болести на обмяната"*)[196] Those Ordinances, however, regulate only

[192] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), Art. 45, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409 .

[193] Bulgaria, Citizen Registration Act (*Закон за гражданската регистрация*) (27 July 1999), Art. 42, available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2134673409 .

[194] Bulgaria, Bilitis Resource Foundation (*„Фондация „Ресурсен център Билитис"*) (2012), Sex Change of Trans and Intersex People in Bulgaria (*Смяна на пола на транс и интерсексуални хора в България*), available in Bulgarian at: http://178.254.232.11:4801/dacyron/Strategy_Gender_Reassign_BG_Summary.pdf.

[195] Bulgaria, Ministry of Health (*Министерство на здравеопазването*), Ordinance № 32 from 30 December 2008 for the approval of Medical Standards "Obstetrics and Gynaecology (*Наредба № 32 от 30 декември 2008 г. за утвърждаване на медицински стандарт "Акушерство и гинекология"*), Annex to Art. 1, para. 1, Part 1, Chapter II, para. 3.1, available in Bulgarian at: http://www.mh.government.bg/DownloadHandler.ashx?id=9477.

[196] Bulgaria, Ministry of Health (*Министерство на здравеопазването*), Ordinance № 6 of 10 February 2005 on the approval of Medical standards "Endocrinology and Diseases of the Metabolism" (*Наредба № 6 от 10 февруари 2005 г. за утвърждаване на Медицински стандарт "Ендокринология и болести на обмяната"*), 8 May 2005, Annex to Art. 1, Section IV, para. 4.3.2, k) and 5.3.2 d) and e), available in Bulgarian at: http://www.ciela.net/svobodna-zona-darjaven-

the basic requirements for the medical facility where treatment can be performed, the necessary qualifications of the medical specialists involved and others. No legal grounds or medical procedures which have to be followed when treating intersex conditions are included, except the fact that the Obstetrics and Gynaecology Ordinance includes only intersex conditions of girls up to the age of 18. On the other hand, the Endocrinology Ordinance stipulates for children with intersex genitals in their early / incomplete puberty in addition to women with menstrual problems.

According to information obtained from the Ministry of Health[197], informed consent in all cases of medical interventions in cases of intersex conditions is regulated in the general way, as stipulated by the Health Act (*Закон за здравето*). Thus, according to Art. 87 medical interventions are performed after an informed consent by the patient. If the patient is under the age of 14, the informed consent is given by his/ her parent or guardian except in cases where the child had been placed outside his family and taking the consent of his/ her parent or guardian is not possible. In such case the consent is given by the person who was appointed to take care of the child by the "Social Assistance" Department.[198] If the patient in above 16 and under 18, the informed consent is given by the patient and his/ her parent or guardian, except for in cases of health consultations, prophylactics and medical tests, specifically named by the Minister of Health.[199]

In order an informed consent to be taken, the doctor gives information to the patient and/ or to his/ her parent or guardian about the diagnosis and the character of the disease; description of the aims and the nature of the treatment, the reasonable alternatives, the expected results and the prognosis; the potential risks, connected to the suggested methods for treatment and diagnosis, as well as the unwanted side effects and adverse reactions, pain and other discomforts; and information about the likelihood of favourable influence and the possible health risks in the application of other methods of treatment or in case of refusal of treatment.[200] Furthermore, all the information described has to be presented timely and in an appropriate volume and form, enabling freedom of choice of treatment.[201] In cases of surgery, general anesthesia and other invasive diagnostic and therapeutic methods that can lead to increased risk to the life and the health of the patient or to a temporary change in his/ her mind, the information under Art. 88 and informed consent is given in writing, except in case of a danger for the patient's life and his/ her condition is such, that it is impossible to get an informed consent ot the patient's parent or guardian cannot be found.[202]

vestnik/document/2135499855/issue/2448/naredba-%E2%84%96-6-ot-10-fevruari-2005-g-za-utvarzhdavane-na-meditsinski-standart-.

[197] Bulgaria, Ministry of Health (*Министерство на здравеопазването*), Reference on the questions placed in a request with an incoming number 93-00-01/18 December 2013 (*Справка по поставените въпроси в заявление с вх. № 93-00-01/18 December 2013*), undated and unsigned.

[198] Bulgaria, Health Act (*Закон за здравето*) (1 January 2005), Art. 87, para. 4 and 5, available in Bulgarian at http://www.lex.bg/laws/ldoc%20/2135489147.

[199] Bulgaria, Health Act (*Закон за здравето*) (1 January 2005), Art. 87, para. 2 and 3, available in Bulgarian at http://www.lex.bg/laws/ldoc%20/2135489147.

[200] Bulgaria, Health Act (*Закон за здравето*) (1 January 2005), Art. 88, para. 1 (adopted on 2 June 2009), available in Bulgarian at http://www.lex.bg/laws/ldoc%20/2135489147.

[201] Bulgaria, Health Act (*Закон за здравето*) (1 January 2005), Art. 88, para. 2 (adopted on2 June 2009), available in Bulgarian at http://www.lex.bg/laws/ldoc%20/2135489147.

[202] Bulgaria, Health Act (*Закон за здравето*) (1 January 2005), Art. 81, para. 1 and 2, available in Bulgarian at http://www.lex.bg/laws/ldoc%20/2135489147.

I. Miscellaneous

The prison system collects information regarding the sexual orientation of prisoners. Any such information is fed into the risk assessment of the detainee. In an actual case observed by the Bulgarian Helsinki Committee (human rights NGO) at the Sliven prison concerning a female prisoner of bisexual orientation, conclusions about her sexual orientation – wrongly determined to be homosexual, were included in the 'Accommodation', 'Family Relations', 'Lifestyle and Contacts', 'Emotional Status' and 'Mindset and Behaviour' sections. These sections also stated that prior to her imprisonment, the individual was cohabiting with another female (whose name was explicitly stated) with whom she had an intimate relationship; also, that the prisoner had a 'masculine behavioural pattern' and 'masculine appearance'. The prisoner herself was never questioned about her sexual orientation. The information and details contained in her risk assessment as an offender was accessible to any third party legally entitled to access prisoner records – the courts, prosecutor's office, etc. – for the purposes of determining the rights ensuing from a prisoner's behaviour during the term of imprisonment.
According to the information of the reporter, the Bulgarian Helsinki Committee, which conducts systematic monitoring to the places for deprivation of liberty in Bulgaria, the practice has not been legally challenged and there are no indications that such information is officially being recorded at the moment.

The research in 2010 found only one example of homophobia related provision in newly adopted legislation. It is already mentioned in para.62 of the report:

On 18 November 2009 the municipal council of Pazardzik has adopted local public order regulations[203] explicitly banning 'public demonstration and expression of sexual orientation in public places' in Article 14. While the language is neutral, the intent is to curtail homosexual expression in public. This is the first time such a norm is adopted in Bulgaria. It is a precedent attempt by the authorities to prevent open gay expression in public. The move comes after the first two consecutive annual gay pride parades in Sofia. As described in Section E. Freedom of assembly, the discriminatory regulation has been successfully challenged before a court and subsequently dropped.

[203] Bulgaria, Pazardzhik Municipal Council (*Общински съвет Пазарджик*), 'Regulations for the public order in Pazardzhik Municipality' ('*Наредба за обществения ред в община Пазарджик*), adopted with a Decision № 61/27 April 2006 and amended with Decision № 211/12 November 2009.

J. Good practices

No good practices have been identified by the reporter.
Currently, there are no LGBT NGOs that have a capacity to be able to promote rights of LGBT people at a larger and a more consistent scale. This fact, together with the lack of an active LGBT community, does not provide for a fruitful environment for good practices in promoting LGBT rights to occur in the Bulgarian society.

Annex 1 – Case law

Chapter A, Implementation of the ban on discrimination in relation to sexual orientation outside the scope of Employment Directive 2000/78/EC: provision of public services: policing, case 1

Case title	Ilir Ayeti v. Dimitar Spasov
Decision date	13 October 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Комисия за защита срещу дискриминация [Protection Against Discrimination Commission (PADC)] (equality body)
Key facts of the case (max. 500 chars)	The complainant, a gay man of Albanian ethnic origin, was detained by the police in the early hours of the morning of 24 October 2005 in the street near a night club frequented by LGBT patrons. One of the policemen allegedly used offensive language with respect to the complainant's ethnicity and sexual orientation. The complainant was later detained for 12 hours. He alleged he was beaten and verbally assaulted while in detention.
Main reasoning/argumentation (max. 500 chars)	The PADC held that the complainant had been subjected to verbal harassment by one of the police officers. It reasoned that this was established based on a failure by the respondent to adduce any proof to rebut the inference of discrimination arising from the evidence in the case. However, the PADC found the complainant's allegations that he had been ill-treated while in detention to be unsubstantiated.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Multiple discrimination on sexual orientation and ethnicity grounds; verbal harassment by law enforcement personnel; shift of the burden of proof requiring the defendant to rebut a factual presumption of discrimination arising from the facts presented to the court by the plaintiff.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Monetary sanction imposed on the individual police officer found liable for harassment of BGN 250 (approx. 115 Euro).

Chapter A, provision of public services: context of education, case 2

Case title	Queer Foundation et al. v. Sofia University
Decision date	21 April 2005

Reference details (type and title of court/body; in original language and English [official translation, if available])	Софийски районен съд, *33* граждански състав [Sofia District (trial) Court (civil division, 33-rd panel)]
Key facts of the case (max. 500 chars)	Gay NGO jointly with affected individuals alleged that members of a non-incorporated gay sports club were banned from access to the Sofia University sauna by a doorman on explicitly homophobic grounds. An activist from the claimant NGO later sought an explanation from the university rector, who openly supported the ban on explicitly homophobic grounds. Threatened with legal action by the activist, the rector issued a formal ban ostensibly barring all non-students and non-faculty members from access to the facility. Situational testing, however, revealed that other non-university parties were freely admitted, while members of the gay club were not. In court, the claimant NGO alleged the impugned ban constituted direct discrimination based on sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The court declared the ban on admission to the sauna to be an act of direct discrimination based on sexual orientation, for which the university was liable. The court confirmed the standing for public interest NGOs to bring lawsuits in their own capacity, as well as in support and on behalf of victims.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio popularis* claim brought by public interest NGO in its own capacity and as representative of victims; express recognition of NGO standing in reasoning; *obiter dictum* interpretation of the principle of the shifting burden of proof and of the vicarious pecuniary liability of organisations for acts of discrimination perpetrated by their employees regardless of those employees' organisational roles and decision-making powers.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Compensation awarded to four individual victims of BGN 500 (approx. 250 Euro) each. High profile case – first sexual orientation discrimination case brought under the PADA; gay case against the foremost national university.

Chapter A, provision of public services: donation of blood, case 3

Case title	Ivelina Pashova et al. v. National Centre for Transfusion Haematology
Decision date	2 February 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	Three LGBT activists from the LGBT – Plovdiv (ЛГБТ - Пловдив) NGO filed a lawsuit against the National Centre for Transfusion Haematology (NCTH) (*Национален център по трансфузионна хематология, НЦТХ*) regarding an informational brochure about blood donation, which forbade donation of blood from people who are "homosexual or have sexual contacts with homosexuals".

Main reasoning/argumentation (max. 500 chars)	The PADC found that the brochure in question was printed at some time before 2008 and has not been distributed by the Centre after 2008. Thus, finding that the statutory time limit of three years has passed, the Commission discontinued the case.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio popularis* claim brought by three LGBT activists; statutory time limit interpretation .
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The case was discontinued because the statutory limitation period had passed. No remedy had been obtained.

Chapter A, discrimination in employment, case 4

Case title	Chavdar Arsov v. the Secretary of the Bulgarian Federation of Sleds on Artificial and Natural Tracks
Decision date	17 February 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	After participating in a Mr Gay Competition, the applicant Mr Chavdar Arsov lost his job as a national coach within the Bulgarian Federation of Sleds on Artificial and Natural Tracks (*Българска федерация по шейни на улей и естествени трасета*) and was not allowed to take part in competitions. Allegedly, Mr Arsov was working as a non-contracted national coach and was running his own sport club since 2006. After his participation in a Mr Gay Competition in Sofia and Oslo the Federation opened an official position for a new national coach. Although, Mr Arsov was the only candidate, the Secretary of the Federation on numerous occasions discussed the sexual orientation of the applicant using highly pejorative language. Furthermore, the club of the applicant was expelled from the Federation for undermining its prestige.
Main reasoning/argumentation (max. 500 chars)	The PADC found that, although there was a dispute on whether Mr Arsov was actually working as a national coach, undoubtedly the Secretary of the Federation has discriminated Mr Arsov on the basis of his sexual orientation by discussing and making derogatory comments about the applicant's sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Personal claim brought by an individual; was there an actual employment of the applicant in the Federation;

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission found that the acts of the defendant constituted direct discrimination in the form of harassment and recommended to him to refrain from further discrimination. Precedent case in the sphere of employment.

Chapter E: Freedom of Assembly

Case title	BGO Gemini v. Varna municipality
Decision date	17 October 2006 (PADC); 15 May 2007 and 16 November 2007 (Supreme Administrative Court); 24 March 2008 (PADC – second decision); 22 July 2008 and 04 March 2009 (Supreme Adminsitrative Court).
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (PADC) (equality body) (Комисия за защита срещу дискриминация), Supreme Administrative Court (Върховен административен съд)
Key facts of the case (max. 500 chars)	On 24-27 August 2005 an information marquee, an open stage and a beach volleyball tournament at the central beach were planned by the LGBT organisation in Varna. All events were banned by the mayor illegally (according to Bulgarian law) one day before they were to take place. Thus, the organisers could legally set up the events, regardless of the mayor's ban. The organisers held the information marquee at a private lounge at the central beach with a very low rate of attendance. The other two events were cancelled. All the regional media vastly commented the mayor's decision. Thus, the organisers did not appeal the ban before the Varna Regional Court, due to the overwhelming media attention. The BGO Gemini lodged a complaint before the PADC against the ban imposed on the information marquee arguing that the mayor of Varna had explicitly expressed his prejudices and alleging the presence of indirect discrimination in the mayor's ban. The facts suggest a clear case of covert direct discrimination, according to Bulgarian anti-discrimination law.
Main reasoning/argumentation (max. 500 chars)	PADC held that the complainant had been subjected to indirect discrimination. The Commission's reasoning for why this was indirect discrimination was that the municipality's decision to ban the event resulted in 'a discriminatory practice by implementing a seemingly neutral provision'.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Both the complainant and PADC wrongly identified the mayor's bans as indirect discrimination on sexual orientation. The first court instance confirmed the PADC legal qualification, rather incorrectly. The last court instance, however, found that indirect discrimination is not present, but failed to provide any legal interpretation while returning the case to the PADC.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Monetary sanction imposed on Varna municipality in the amount of BGN 500 (approx. 250 EURO). The mayor appealed the decision before the Supreme Administrative Court. The first instance three-member jury confirmed the Commission's decision on 15 May 2007. The second instance five-member jury revoked the decision on 16 November 2007, finding that there was no indirect discrimination in the case and that the Commission's reasoning did not stand up to scrutiny and was incomplete. The court returned the case to the Commission which again fund discrimination. Eventually the Supreme Adminsitrative Court confirmed the presence of indirect discrimination and the imposed fine.

Chapter E: Freedom of Assembly, Case 2

Case title	Radoslav Stoyanov and Dobromir Dobrev v. the Pazardzhik Municipal Council
Decision date	11 May 2010 (PADC) and 1 July 2011 (Supreme Administrative Court)
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	On 18 November 2009 the municipal council of Pazardzhik has adopted a local public order, according to which "public demonstration and expression of sexual orientation in public places" was expressively banned.
Main reasoning/argumentation (max. 500 chars)	The Commission found that although the regulation in question was seemingly neutral, the defendant explicitly had said in the media that one of the reasons for adopting the regulation was to protect "the people with normal sexual orientation". Taking this into consideration, as well as the overall situation of sexual minorities in the country, the PADC found the provision was discriminatory.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio popularis*. Although the Commission found that the regulation was neutral in nature, it still found direct discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC found that with adopting the regulation, the municipal council has committed direct discrimination and made a prescription to the Council to revoke the text of the regulation. The Commission recommended to the Head of the Municipal Council to refrain from further discrimination. The Regulation was subsequently repealed.

Chapter F, Hate speech, case 1

Case title	Axinia Guencheva et al. v. Volen Siderov
Decision date	30 November 2006

Reference details (type and title of court/body; in original language and English [official translation, if available])	Софийски районен съд, *29* граждански състав [Sofia District (trial) Court (civil division, 29-th panel)]
Key facts of the case (max. 500 chars)	A large group of NGOs and individual victims jointly filed a PADA civil lawsuit against MP and political party leader Volen Siderov for radical public hate speech against gay people, among others. The allegations were that remarks which were so widely broadcast (on television, in Parliamentary plenary sessions and at public rallies) by an official constituted harassment and incitement to discrimination. The remedy sought was a declaration of discrimination, a ban on the respondent making such statements publicly again and an order for him to make a public apology to the LGBT community for subjecting them to harassment and incitement to discrimination.
Main reasoning/argumentation (max. 500 chars)	The court failed to rule on the merits of the case, irrationally refusing to accept that the adduced evidence was sufficient to consider the impugned statements established as facts. The higher court (Sofia City Court)[204] held that the homophobic statements do constitute neither harassment, nor incitement to discrimination. Using the argument that there is no comparison between homogenic groups and this is why the statements do not constitute any form of discrimination the court misinterprets the law. This decision was appealed before the Supreme Cassation Court in October 2009, which, however rejected the appeal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	No reasoning on the substantive provisions of anti-discrimination law; procedural scholasticisms concerning the weight of various types of evidence.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	No declaration of discrimination; no remedy.

Chapter F, Hate speech, case 2

Case title	Bulgarian Gay Organisation Gemini v. *Duma* daily newspaper
Decision date	28 June 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Комисия за защита срещу дискриминация [Protection Against Discrimination Commission (PADC)] (equality body)

[204] BulgariaSofia City Court (*Софийски градски съд*), decision from 1 September 2009, case file № 285/2007, 1 September 2009.

Key facts of the case (max. 500 chars)	A homophobic article written by an individual was published in the daily newspaper, *Duma*. A complaint was filed by the public interest gay NGO, BGO Gemini, against the newspaper, alleging incitement to discrimination. Settlement approved by the PADC, including a recognition on the part of the paper that some of the impugned material was generally wrong and a commitment to abstain from publishing similar material in the future.
Main reasoning/argumentation (max. 500 chars)	N/A
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	N/A
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Precedent of seeking legal liability of a newspaper for a homophobic article; precedent of settlement involving express recognition of fault and commitment to abstain from further such conduct.

Chapter F, Hate speech, case 3

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Weekend newspaper (2)
Decision date	26 May 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	An article in the Weekend newspaper entitled "Shame! Gay Scandal at CSKA" (*"Срам! Гей скандал в ЦСКА*) was published on 26 September 2009. The article concerned the case of a football player from the CSKA club, who allegedly was penalised for ruining the prestige of his club after the publication of a photo on Facebook, where the footballer was kissing another man.
Main reasoning/argumentation (max. 500 chars)	The PADC found that by highlighting the alleged sexual orientation of the football player and describing the story as a "shame", "disgrace" and "scandalous", the newspaper has created a hostile and offensive environment for all people with different sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC found discrimination and as a precedent in such a case required that the paper's management to develop and implement self-control rules and mechanisms in order not to allow discrimination.

Chapter F, Hate speech, case 4

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Weekend newspaper (2)
Decision date	30 July 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	The case concerned an article, published on 03 September 2009 in the "Weekend" newspaper, entitled "Sensation! The Belneyski's" Killer is a Homosexual"(„Сензация! Убиецът на Белнейски е хомосексуалист"). The material alleged that the murderer of the Belneyski sisters, which case became well-known in the country, was homosexual.
Main reasoning/argumentation (max. 500 chars)	According to the PADC with the used title, the newspaper has suggested to the readers, that the alleged homosexuality of the murderer was the reason for committing the crime and thus has created a hostile and offensive environment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC fined the editor-in-chief and publisher of the newspaper, Mr Martin Radoslavov, with BGN 800 (€ 409) and advised the journalist who had prepared the article to abstain from "presenting unconfirmed and unproven facts and circumstances as factual truth". Furthermore, the Commission recommended to the journalist "not to try to create stereotypes and negative attitudes towards the people with non-heterosexual and homosexual orientation led only by her aspiration for sensations."

Chapter F, Hate speech, case 5

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Galeria Newspaper
Decision date	30 July 2010 (PADC), 8 July 2011 (Supreme Administrative Court)
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*, Supreme Administrative Court (*Върховен административен съд*)
Key facts of the case (max. 500 chars)	In 2009 The "Galeria" newspaper published a series of articles concerning homophobic insults, including an interview with a famous actor. The activists Radoslav Stoyanov and Dobromir Dobrev filed an application against the newspaper before the PADC alleging the publication of such articles and comments were discriminatory. After the beginning of the lawsuit before the PADC, the newspaper published a new homophobic article, called "The Faggots Rose Up Against Galeria" (*„Педалите скочиха срещу Галерия"*).
Main reasoning/argumentation (max. 500 chars)	the PADC found that the "Galeria" newspaper has committed harassment and subsequently has victimised the applicants Mr Dobromir Dobrev and Mr Radoslav Stoyanov.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis*, Freedom of speech and the use of homophobic language, Victimisation
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission found discrimination and ordered the maximum fine 2,500 BGN (1,278 EUR) to the publisher of the newspaper and 500 BGN (255.65 EUR) to the chief editor. The decision was confirmed by the Supreme Administrative Court, which however quashed the imposed fines.

Chapter F, Hate speech, case 6

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Sportline.bg
Decision date	2 September 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	On 14 October 2010 the Sportline.bg website published an article, entitled " A Young Boy Bends Down Before a Whole Team of Faggots" (*„Младо момче се наведе пред цял отбор педери"*) and with a sub-title "Homosexual Football Players Are Again Complaining About Homophobia in France" (*„Хомосексуалисти футболисти пак се жалват от хомофобия във Франция"*)..
Main reasoning/argumentation (max. 500 chars)	The PADC found that in the article the publisher has used a highly pejorative language to describe homosexual men which constituted discrimination in the form of harassment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission found discrimination and ordered the defendant to abstain from publishing comments about people's intimate life and sexual orientation and to introduce mechanism for self-control in the media in order further discriminatory articles to be prevented from being published.

Chapter F, Hate speech, case 7

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Frognews.bg
Decision date	8 September 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)
Key facts of the case (max. 500 chars)	In 2010 the Frog News Website published by an article called "The Gay Agents Among the Diplomats Were Hidden" („Скриха гейовете агенти в дипломацията"). The article contained some information about the alleged homosexual orientation of Bulgarian diplomats who were former agencies of the communist secret service.
Main reasoning/argumentation (max. 500 chars)	The PADC found that in the article the publisher has used a highly pejorative language to describe homosexual men which constituted discrimination in the form of harassment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission found discrimination and ordered the defendant to abstain from publishing comments about people's intimate life and sexual orientation and to introduce mechanism for self-control in the media in order further discriminatory articles to be prevented from being published.

Chapter F, Hate speech, case 8

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Maritsa
Decision date	2 March 2012 (PADC), 1 November 2012 (Sofia City Administrative Court)

Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*);Sofia City Administrative Court (*Административен съд София-град*)
Key facts of the case (max. 500 chars)	The case concern an article entitled "City Officials under the Same Roof with Gays" („*Градски първенци под един покрив с гейове*") which was published by the Plovdiv newspaper "Maritsa" („*Марица*").
Main reasoning/argumentation (max. 500 chars)	The Commission found that "the expressions and qualifications used in the article […] propagate animosity and violate the dignity and the honour of all people with different sexual orientation and create an abusive and hostile environment for them".
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC imposed administrative fines to the company, that publishes the newspaper with 1,500 BGN (767 EUR) and its director with 500 BGN (255.65 EUR). The Decision was confirmed in by the Sofia City Administrative Court.

Chapter F, Hate speech, case 9

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Yulian Vuchkov
Decision date	2 March 2012 (PADC); 22 June 2012 (Sofia City Administrative Court); 27 December 2012 (Supreme Administrative Court)
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*);Sofia City Administrative Court (*Административен съд София-град*); Supreme Administrative Court (*Върховен административен съд*)

Key facts of the case (max. 500 chars)	On 8 February 2011 Mr Yulian Vuchkov, a host of a TV show, aired an interview with the then Prime Minister Mr Boyko Borissov. During the interview, Vuchkov explained that one of the pressing issues is that the government needs to consider is the "praise of perversion", that gay people "cannot demonstrate their gayness in a nasty manner" and that "this already happens in many TV channels and many concert halls". The decision of the PADC, however, was quashed by the Sofia City Administrative Court with a decision from 22 June 2012 and which decision was confirmed again by the Supreme Administrative Court. Both courts found that the words of
Main reasoning/argumentation (max. 500 chars)	The PADC found that Mr Yulian Vuchkov used a highly derogatory language against non-heterosexuals and by making offensive qualifications has imparted to the audience of his show false beliefs and inspired feeling of disgust, hostility and as a conclusion, of desire to rejection of those, who are non-heterosexual.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC fined Mr Yulian Vuchkov with 250 BGN (127 EUR) and imposed him not to abstain from further discrimination on the basis of sexual orientation. The Sofia City Administrative Court quashed the decision and found that no discrimination was at stake, which decision was later confirmed by the Supreme Administrative Court. As a result, no remedy had been obtained.

Chapter F, Hate speech, case 10

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Blitz.bg
Decision date	18 June 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*)

Key facts of the case (max. 500 chars)	On 8 February 2011 the news website Blitz.bg published an article, entitled "The US Senate Allowed the Fags to Enrol in the Army" (*„Американският сенат разреши на обратните да служат в армията*"). The article used highly derogatory qualifications referring to non-heterosexual people in the US army, which allegedly was so, in order repetitions to be avoided.
Main reasoning/argumentation (max. 500 chars)	The PADC found that the terms used in the article, the website has suggested that same-sex intimate relationships are scandalous, disgraceful and unworthy and as such has created a an intimidating social environment for non-heterosexual people.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The PADC found that the publishing of the article constituted discrimination in the form of harassment and instructed the defendant to abstain from further discrimination and to make the necessary arrangements for creating a preventive mechanism in the media.

Chapter F, Hate speech, case 11

Case title	Radoslav Stoyanov and Dobromir Dobrev v. Andrey Slabakov
Decision date	26April 2012 (PADC); 25 October 2012 (Sofia City Administrative Court); 11 December 2013 (Supreme Administrative Court)
Reference details (type and title of court/body; in original language and English [official translation, if available])	Protection Against Discrimination Commission (*Комисия за защита от дискриминация*);Sofia City Administrative Court (*Административен съд София-град*); Supreme Administrative Court (*Върховен административен съд*)

Key facts of the case (max. 500 chars)	During a TV interview aired on 28April 2011 Mr Andrey Sklabakov, a famous TV director, said that "[…] the spread of AIDS is not just because of the drug-addicts, which, we know that in some countries it is allowed for a person to take drugs, but the cigarettes are even more dangerous… Moreover, let's put aside that they widely spread AIDS, because not all gays are homosexual, as some of them are bisexual. This does not work in the society's interest". He further announced that "gay [men] are more dangerous than [smoking] cigarettes".
Main reasoning/argumentation (max. 500 chars)	The PADC found that the defendant has expressed his personal opinion, and although it is negative, it did not constitute discrimination. The Commission's decision was quashed by the Sofia City Administrative Court , which found that the derogatory expressions actually were discriminatory and returned the case to the Commission. This decision was confirmed by the Supreme Administrative Court.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	*Actio Popularis,* Freedom of speech and the use of homophobic language,
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The case is now pending for a new trial before the Protection Against Discrimination Commission.

Annex 2 – Statistics[205]

Chapter A, Implementation of the ban on discrimination in relation to sexual orientation outside the scope of Employment Directive 2000/78/EC

	2000	2001	2002	2003	2004	2005	2006	2007	2008	200	2010	2011	2012	2013
Total complaints of discrimination on the grounds of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)						1 (acc ess to publ ic serv i ces by educ ation al insti tutio n)	2 (poli cing; free dom of asse mbl y)	1 (em ploy men t in priso n)	3 (fam ily right s, no infor mati on abou t the rest case s)	6 (n o in fo r m ati on w as pr ov id ed ab	3 (fam ily right s, no infor mati on abou t the rest case s)	9 (fam ily right s, no infor mati on abou t the rest case s)	2 (fam ily right s, no infor mati on abou t the rest case s)	7 (fam ily right s, no infor mati on abou t the rest case s)
Total finding of discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated						1	2	0	0	N o t d e ci	2	4	3	Not dec ide d
National number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if						1	2	0	0	0	1	1	0	0

[205] The reporter collected the data from interviews with BGO Gemini, human rights lawyers, and the Protection Against Discrimination Commission.

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregatedaccording to social areas of discrimination (employment, education, housing, goods and services etc.)						250 Euro pp (compensation)	115-250 Euro (fine)	0	0	0	409 EUR [206]	255.65-707 EUR	0	0

Chapter B, Freedom of movement

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

[206] This was the only compensation awarded in 2010.

Chapter C, asylum 1

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the grounds of sexual orientation	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Chapter C, asylum 2

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2h Directive 2004/83/EC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Chapter D, family reunification

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases initiated regarding homophobic hate speech (number								0	1	0	0	0	0	0
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)								0	1	0	0	0	0	0
Range of sanctions issued for homophobic hate speech								0	0	0	409 EUR [207]	255.65-707 EUR	0	0
Number of non-criminal court cases initiated for homophobic statements							2	0	N/A	0	3	2	3	0
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)							?settlement?	0	N/A	N/A	3	2	1	

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				? (legal practice is	✓	✓	? (legal practice is not consistent)	✓	✗	Changes of identity documents and birth certificates are possible. Change in other official documents remains unclear.

[207] This was the only compensation awarded in 2010.

				not consistent)						
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case *Lydia Foy* (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			

SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ×=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[208]	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	No new developments were recorded in the period 2010 – 2013.
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		

208 Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[208]	All areas of RED*		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	**9**	**7**	**11**	**20**	

Note: ✓ = Applies; **?** = doubt; **x** = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or *travaux préparatoires*
BG			✓	An unsuccessful attempt for amendment to explicitly include gender reassignment cases within sex discrimination in the Protection Against Discrimination Act was made in 2013-2014.
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to 'gender identification'.
DE			✓	Constitutional amendment proposal by opposition ('sexual identity')
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to 'other issues related to gender'.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	**10**	**3**	**15**	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on 'incitement to hatred' and 'aggravating circumstances' covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people. In December 2013 a draft of a new Criminal Code that includes "provisions on incitement to hatred" (Art. 188 and 189) and "aggravating circumstances" (Art. 110, 125, 208 and 589) and which explicitly cover sexual orientation. As of February 2014 the new Bill is still pending in the Parliament.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category 'group of people', but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of 'family member' for the purposes of free movement, asylum and family reunification

Country Codes	Free movement[209]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of 'family member' includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of 'family member' includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.No new developments were recorded in the 2010 – 2013 period.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the 'affective relationship' be 'duly attested' remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried *de facto* partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.

[209] In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a durable relationship' may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement[209]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	**8**	**15**	**8**	**13**	**8**	**12**	

Note: ✓= applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.