

**Cluster members' reflections on study visit to the Bulgarian Commission for the Protection from Discrimination,
Sofia, 31 May 2017**

Albanian Commissioner for the Protection from Discrimination

“The study visit to Bulgaria's equality institution was an interesting experience for me personally. I will bring here some of my views regarding what I saw there always comparing them with the Albanian Commissioner. Although at first glance the institutions have similar competencies based on the relevant laws I want to emphasize that they differ from the way these powers are exercised and how the institutions function.

1. The Bulgarian Commission is composed of nine persons. Five members, including the Chairperson and the Deputy Chairperson of the Commission are elected from the National Assembly and four members of the Commission are appointed from the President of the Republic of Bulgaria.
Decisions shall be taken by a simple majority of the members of the panel and shall be signed by them. (2) A member of the panel who does not agree with the decision of the majority shall sign the decision with a dissenting opinion, which he/she shall motivate.

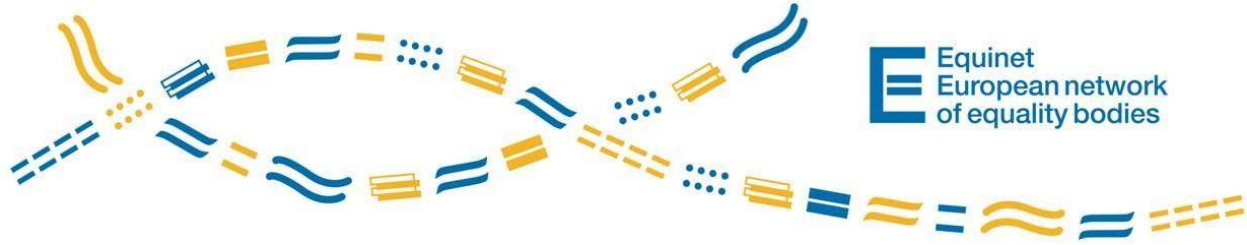
First of all, the way of election of members of the Commission by the Assembly and by the President is a way that enhances the independence of the institution compared with the election of the Commissioner in Albania by the majority of the members of the assembly, which will be always the winner of the election in that legislature, the majority which forms the government.

Secondly, making decisions by the majority of the Commission as well as including the opinion against, it is a way of increasing confidence in the independence of the Commission's decisions since in my opinion it is quite different from the decision by a single person.

2. What has impressed me is the provision in the law : Article 57 “.... (2) The compulsory collection of evidence under Paragraph (1) shall be done by permission of a Sofia City Court judge upon a request by the Chairperson of the Commission.”

This tool to gather evidence helps a lot because, because of the experience of the Albanian institution, the inability to gather the right evidence makes difficult to make a as fairly as possible decision.

Regarding the deadline I see it is shorter than the one provided by the Albanian legislation. Based on Bulgarian law “The investigation shall be conducted within a term of 30 days. In cases of factual and legal complexity, the term may be extended by up to 30 days by an order of the Chairperson of the Commission”



The Albanian law provides for a deadline of 30 days within which subjects are required to provide the requested information. The Albanian Commission shall issue a decision, which shall be notified to the parties within 90 days from the day of receipt of the complaint or if a public hearing has been held within 90 days of the hearing.

As above, the possibility of collecting information within 30 days under the terms of Albanian legislation seem impossible.

3. Holding a hearing for every case has been a surprise to me. With regard to this issue the questions that came in mind are:
 - Are these sessions always necessary?
 - Are there cases for which a decision can be taken without a hearing being held?

In my judgment, from what I saw the day of the study visit, not all the hearings were necessary.

The Albanian law does not foresee the obligation to hold a hearing session and in my judgment I see it right because there are times when a session would be excessive and waste of time and human resources.

4. According to Bulgarian law, the Commission decision, inter alia, decides the type and amount of the sanction.

According to Albanian law a sanction is not foreseen in the decision of discrimination. In this decision are ordered measures aimed at regulating the discriminatory situation.

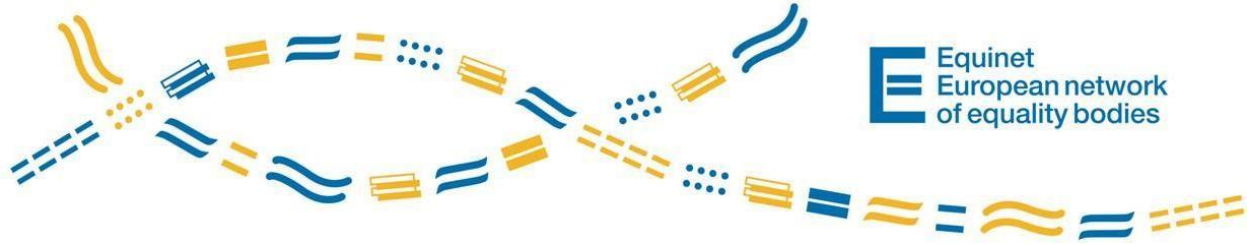
If the entity fails to take measures to fulfill the administrative measures ordered in the decision according to the deadlines provided for in the law, the Albanian commissioner imposes a sanction with a fine. If within seven days from the imposition of the sanction the subject fulfills the measures, the law provides for the removal of the sanction.

In the Albanian law the sanction is not seen as a purpose in itself but as a tool in the service of regulating the discriminatory situation.

In section 2 of Bulgarian law, it is very clear the provision of sanctions involving not only those that have committed discriminatory behavior but also other subjects, including those that do not provide the data requested by the Commission within a term.

I think that this detailed provision is very important and it helps the Commission in its work. In Albanian law there is a not very clear provision and we are obliged to interpret and use in cases when we want to impose a sanction on the subjects that do not bring the requested information.

These are some of the issues that I have highlighted during the study visit.”



**FYRoM
Commission
for Protection against Discrimination**

“I was pleasantly surprised by the visit of the Commission in Bulgaria. We talked at a meeting in Brussels on 16.12.2016, what to do in procedures for better functioning commissions. In my opinion, the commission in Bulgaria is very close to the priority international standards.

If we start with the resources that are needed for good results in the work, we saw that they have a large building, with nicely arranged rooms, equipped with appliances and computers. **Furthermore, a sufficient number of employees that help committee members quickly and efficiently to complete their work.** Such as recordkeepers, translators, department heads and other technical personnel. We heard that they have offices in other cities, which also speeds up the work of the commission. It can be said that there is a political will in the country, to allow the commission to carry out its work effectively. It would have to be an example for all member states of the Equinet.

As for the procedure, it should be an example for all commissions. The specially arranged halls, the information provided by the members of the composition, the places for the parties in the procedure give the authority of the whole process. In this way, the parties in the procedure and the entire public will gain confidence in the work of the commission.

I understood the hearing in two ways. Firstly, that each party to the proceedings, both the submitter and the respondent, should give their oral presentation. The fact that the commission is listening to both sides in a live way, facilitates its work to a large extent. Secondly, if necessary, witnesses are invited at the next hearing, which further allows the right factual situation to be established.

We have heard many more useful things therefore I think that this should be the way of our work. We should comment on these brief reports in Brussels and draw conclusions that will help us to reach a conclusion that is most important for unifying the proceedings in Europe

Lastly, I would like to emphasize that the organization and welcoming in Bulgaria should serve as an example for all countries.”

Greek Ombudsman

“After a small research on the topic of the quasi-judicial bodies, I found a description of the functions of the Bulgarian Commission for protection against discrimination in a report published by the FRA on December 2012 under the title “Access to justice in cases of discrimination in the EU – Steps to further equality” (see 1.1). I also found relevant Information in the EC “Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC”, published in 2010.

My
reflections on

our meeting in Sofia focus on positioning the Bulgarian Commission for protection against discrimination within the legal framework and on assessing its ability to contribute to equality law development. In that respect, I think that it would be very helpful if our colleagues from this Commission could provide us with some statistic data as to how often its decisions are upheld by the courts, how often they are overturned and how often the jurisprudence of the Commission appear in judicial rulings.

Additionally, I find very elucidating the findings following to which the ECJ, in the *Belov* case, concluded that the Bulgarian Equality Commission does not constitute a tribunal and, consequently, cannot ask for preliminary rulings by the ECJ (see paragraphs 38--51). On the other hand, in the case *Z. v. a Government Department (C-363/12)*, the ECJ did ruled on the substance, although a request for preliminary ruling was made by the Irish Equality Tribunal, a body which is also classified as a predominantly tribunal type equality body. I wonder what was the factor which caused these opposite approaches of the ECJ. I intend to search for any comments for either of these ECJ rulings. Perhaps it would also be useful to seek for further information relating to the Irish Equality Tribunal so as to compare it with the Bulgarian Equality Commission.

With these reflections in mind, from tomorrow I will be on vacation and I am planning to be back at work on the 7th of August. In the meantime, if needed, I can be contacted to my personal e-mail which is konstantinos.bar@gmail.com. As to my working plan, by the beginning of September I aim to have made some research with regard to the above mentioned ECJ rulings and to the Irish Equality Tribunal. I suppose that, if necessary, the IET can be asked to give us some feedback. Please correct me if I am wrong.”

Hungarian Equal Treatment Authority

“First of all I would like to emphasize that the meeting was very interesting and thought-provoking. It was interesting to observe the procedures of the Bulgarian Commission and attending the hearings.

I came to the conclusion that the Bulgarian procedure is even more formal than the Hungarian one. The setting of the room and the fact that the members of the sitting panels are wearing robes made the hearing much more official.

It is remarkable since it is usually falls within the competencies of the constitutional courts that the Bulgarian Commission has got the power to rule on complaints challenging potentially discriminatory provisions of legislation.

The fact that the Commissioners’ professional backgrounds are different, i.e. not all of them are lawyers gives the Commission a more interdisciplinary approach during the procedure.

The Bulgarian Commission’s fruitful co-operation and partnership with the press may be seen as good practice and be an example to be followed for the quasi-judicial equality bodies.”

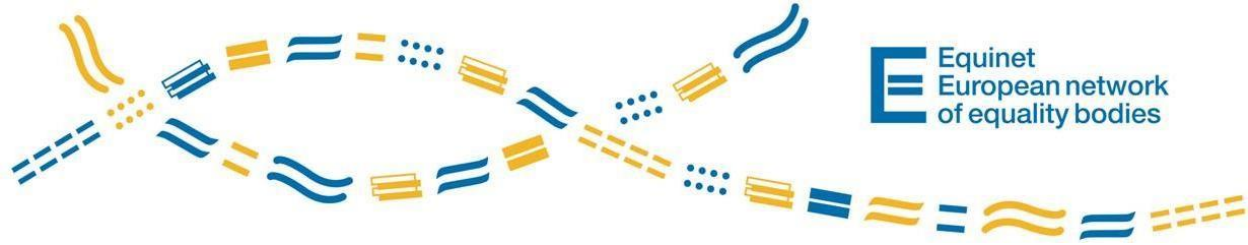
Serbian Commissioner for the Protection of Equality

“Visiting the
Commission

for Protection against Discrimination in Bulgaria (CPD) was a valuable experience for me because it was the first time I had an opportunity to gain insight into the procedure of an equality body in another country since the beginning of my engagement with the Commissioner for Protection of Equality in Serbia (CPE). In that regard, it was particularly interesting to me to compare functions of the two systems.

- My overall impression during the visit is that proceedings before the CPD have many elements resembling those of a court of law and that it is predominantly tribunal-type body. Cases are handled through open hearings in the CPD premises, which look like court rooms. The hearings are open to the public and sometimes covered by the media. Due to the possible sensitive nature of discrimination cases, the Protection against Discrimination Act (PaDA) provides the CPD an opportunity to hold closed sessions under the conditions laid down in Article 136 of the Code of Civil Procedure, according to which privacy protection of the parties is foreseen as one of the reasons for examining the case behind closed doors.
- Particularly interesting is the procedure for appointment of members of panels which handle the cases before the CPD. A panel for each case is formed from nine members of the CPD, based on the specific grounds of the issues raised. The number of panel members varies depending on the number of discrimination grounds involved in a particular case. The cases of multiple discrimination are considered by an enlarged five-member panel, as opposed to the usual three.
- Articles 50 and 51 of the PaDA which lay down proceedings before the CPD reveal that the consent of an aggrieved person is not perceived as a mandatory precondition for the CPD to conduct the proceedings. The institution is empowered to act *ex officio*.
- The CPD is an administrative body. It imposes sanctions and its decisions are appealable.
- According to representatives of the CPD, besides being a quasi-judicial body, it has promotional, preventive and awareness-raising functions on equality and tolerance issues, making it an equality body with full range of functions and a broad mandate for protection against discrimination.

One of the conclusions of the meeting with Bulgarian CPD is that different types of equality bodies in different legal systems can be very efficient. Despite the significant differences between the CPE and CPD,



regarding
their position

in legal systems of the two countries, powers and procedures, both equality bodies accomplish their goals and objectives efficiently and effectively. ¹”

¹ The CPE is not an administrative, but a *sui generis* body, empowered to issue opinions and recommendations with measures prescribed by the Law on the Prohibition of Discrimination. These measures include warning and informing the public about the discrimination acts, and as such they do not resemble the sanctions imposed by court. The CPE decisions are not appealable and are to a great extent (up to 90%) respected and obeyed by persons they were addressed to.