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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

28 May 2018

Case Document No. 8

University Women of Europe (UWE) v. Bulgaria
Complaint No. 125/2016

**OBSERVATIONS BY EQUINET, EUROPEAN NETWORK OF
EQUALITY BODIES**

Registered at the Secretariat on 4 May 2018

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ACTION OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION ABOUT THE EQUAL PAY FOR THE SAME OR EQUAL WORK IN CONNECTION WITH THE PROTECTED GROUND "GENDER"

The Commission for Protection against Discrimination (CPD) is established and operating in compliance with the provisions of the Protection against Discrimination Act, which entered into force on 1 January 2004, and contributes to the formation and effective implementation of the anti-discrimination policy of the Republic of Bulgaria, which includes the equal treatment of women and men. In the activity of the Commission for Protection against Discrimination, the principle of equal remuneration for the same or equal work, as part of the anti-discrimination protection in exercising the right to work, occupies a special place, and the legislator has introduced specific provisions in Art. 14 of the Protection against Discrimination Act. The scope of protection covers both employers in the private sector and state and public authorities and local authorities.

Over the years, the Commission has actively contributed to the development of the national policy for socio-economic inclusion of women in Bulgaria, including by ensuring equal pay for the same or equal work. Ensuring an equal degree of economic independence for women is guaranteed at the legislative level through one of the main objectives of the PfDA, namely the provision of a comprehensive and all-embracing protection against discrimination in the exercise of the right to work - both before the employment relationship (Article 12 of the PfDA) and during its implementation (Article 13 - Article 19 of PfDA) and in the cases of its termination (Article 21 PfDA).

As the only specialized equality body of the Republic of Bulgaria, CPD systematically and consistently improves its capacity to guarantee more effectively the right to equal pay for the same or equal work. CPD members and employees have participated in trainings on this topic and, moreover, the issue of equal pay for the same or equivalent work has been developed as a training module in the CPD's activity on prevention of discrimination.

Regarding the general statements made in the answer of the European group of graduated women about the malfunctioning of the protection against discrimination in Bulgaria, it should be noted that the network of 22 CPD regional representatives working on the territory of the whole country, remote and isolated regions of the country provide free legal assistance by consulting citizens when filing complaints under PfDA. A special Administrative-Legal Service Directorate has been set up at the Commission for Protection against Discrimination, whose legal advisers provide free legal assistance and counseling to citizens who consider themselves to be victims of discrimination.

Regarding the allegations that Bulgaria does not provide any data on the number of complaints submitted and the type of complaints, For the last six years in the period 2012 - 2017 in the

Commission for Protection against Discrimination, the registered files on the protected sign "sex" are 138, with 64% of these cases being multiple discrimination on the grounds of sex. After the complexity of the "personal situation", the signs most often present in combination with the "sex" sign in cases of multiple discrimination are "disability", "education" and "marital status". For the same period In the Commission for Protection against Discrimination, 13 trials for sexual harassment have been initiated. Cases of sexual harassment are delicate, often without witnesses, so complaints to the Commission for Protection against Discrimination have not been many throughout the years. It is important to point out that the CPD treats different forms of discrimination, as well as cases of complaints of discrimination on more than one protected sign (multiple discrimination).

There are no specific statistics about cases of complaints of discrimination under Art. 14 of the PfDA, where the applicant is a "woman", but it is clear from the analysis of the Commission's practice that cases of complaints from women are prevalent in the files examined by the Second Stakeholders of the CPD on the basis of gender. Women are often discriminated against because of unequal pay due to their neglect as employees, and are sometimes subject to mistrust and mockery by the predominantly male IT companies. In the committee, complaints about pregnancy dismissal, warnings from employers to young women entering the workplace, that pregnancy is undesirable, work conditions change for those confessing they are pregnant, lack of lunch break, harassment, discontent, not being considered worthy as employees, even accusations that pregnancy is a betrayal against the management. Through his/her actions and sometimes through the actions of his/her subordinates, the employer creates a hostile environment and discriminates against the woman who wants to be a mother, preventing her from being medically treated, which in some cases is necessary. Sometimes this ends up in redundancy, for example, with the motive that the applicant does not have the necessary qualities for the effective performance of the work obligations. The stress overwhelming future mothers should not be overlooked either. Often, in the cases the CPD receives, it also affects the pregnancy, and sometimes there is a risk of losing the baby.

With regard to ensuring equal pay for the same or equal work, the Bulgarian courts often interpret the non-fulfillment of the obligation under Art. 14, para 1 of PfDA as an independent violation under PfDA. Despite the freedom to negotiate wages, the employer cannot disregard the principle of equal pay under Art. 243 LC, reproduced in the provision of Art. 14 of the Anti-Discrimination Act.

According to the Bulgarian case law, to which the Commission for Protection against Discrimination adheres, equal work is of a different nature, but with the same value of labor, ie. work that, despite its different character, costs as much as work of another kind, no matter who performs it. Equivalence is determined by the equivalence of education qualifications, the duration of labor, the productivity and the conditions under which the work is done.

As examples of a good practice with a view to promoting equality between men and women, including in relation to equal pay for the same or equal work, we can mention the following decisions made over the years:

Decision No. 254 of 17.07.2017

The Second Permanent Chamber of the CPD finds that an employer has committed direct discrimination on the grounds of sex and that the employer company has been imposed to pay a pecuniary sanction of BGN 1250 to a pregnant employee who has previously reported an in vitro procedure. Once the employee announced her attempts to become pregnant, the company began to require continuous information about her pregnancy and stopped her additional health insurance. In her complaint, the employee says she received letters from her employer saying she would be removed from her job and have her card blocked from accessing the building. In addition, the employee received an order requiring her to present a pregnancy document on a monthly basis.

Decision No. 82 of 2016 of the CPD No. 185/2015 and Decision No. 4950 of 2016 of the Association for Administrative Assistance in Administrative Affairs No 3949/2016

The applicant worked as a kinesitherapist in a municipal day care center for social integration and during the period she received a basic monthly remuneration of 360 BGN. The remaining employees of the same position were two men who received basic monthly salaries in the amount of 550 BGN and BGN 640. The job descriptions are the same.

The decisions take into account that the higher degree of higher education of the other two employees can not be a criterion that justifies a difference in the work performed, as long as it is not a prerequisite for taking up the job. The Commission makes a decision to impose a sanction and a wage equalization prescription.

Decision No 1 of 06.01.2015.

The second permanent meeting of the Commission for Protection against Discrimination establishes that the representative of the employer - OCDH - X., VH - Director during the trial period, and H. Delchev V., with address: City of PSD, have directly discriminated against the complainant MSN, with the address: City of PSD, by failing to provide her with equal working conditions and equal remuneration for the same or equivalent work compared to her colleagues, obligations ensuing from Article 13, paragraph 1 and Article 14, Paragraph 1 and Paragraph 2 of PfDA. for every employer, as a result of which they treated her less favorably than other chief inspectors.

IMPOSES based on Art. 80, para. 1 of PfDA. the representative of the employer - OVHH H., VL - Director during the period under investigation, an administrative penalty "fine" amounting to 250 / two hundred and fifty / BGN for violating Art. 13, para 1 Art. 14, para 1 and 2 of PfDA. In connection to art. 4, para 1 and 2 of PfDA.

IMPOSES based on Art. 80, para. 1 of PfDA. of the HV, with the address: town of Dimitrograd, an administrative penalty "fine" amounting to 250 / two hundred fifty / BGN for violating Art. 13, para 1 art. 14, para 1 and 2 of PfDA. In connection to art. 4, para 1 and 2 of PfDA.

The Commission for Protection against Discrimination issues a mandatory prescription for the Director to continue to ensure equal working conditions and to equalize the individual basic salary of the employees of the company occupying the same position under the same conditions of employment.

Decision No. 221 of 2011 of the Commission for Protection against Discrimination No. 2014, as confirmed by the decision № 2966 of 2012 of the ADCC. No. 896/2012, as confirmed by Decision No. 9 of 2013 of the Supreme Administrative Court for administrative action. No 9135/2012

The two complainants began work at the Child Protection Department at the Social Assistance Directorate and soon they were assigned more files than their colleagues. The two newly recruited employees are definitely less paid. They have their annual ratings, which are the same as those of the other employees in the department. Subsequently, the salaries of everyone in the department were increased, but after the increase, the applicants' salary was again lower than that of their colleagues. The Bulgarian equality body states that the non-fulfillment of the obligation under Article 14, paragraph 1 of PfDA is an independent violation of this law and it is not necessary to rely on any of the features under Article 4, paragraph 1 of PfDA. If the factual prerequisites of Art. 4, para. 2 or para. H of the PfDA, the negotiation and payment of a different basic salary for the same or equivalent work could also constitute discrimination. The lower individual basic salary in this case is due to the shorter traineeship and professional

experience of the complainants, respectively. It is based on their personal situation. In its decision, the CPD establishes both a violation of Article 14 and discrimination under Art. 4, and imposes a sanction and a compulsory wage compensation prescription.

*** In the CPD practice, the Second Specialized Permanent Board examines complaints where the complaint of unequal pay is not always discrimination.

Decision № 138 / 13.04.2016 on the number 31/2015 of the Second Specialized Permanent Meeting of the CPD

A second specialized permanent meeting has indicated that the remuneration of the employees under a labor contract in the company is an element of the individual employment contract of each of them and their formation is based on the "Internal Rules for the Organization of Wages", "Collective Labor Contract ", and also according to the requirements of the Labor Code. The individual wage is determined and negotiated at the signing of the individual employment contract, depending on certain criteria and indicators detailed and exhaustively regulated in Section II of the Collective Labor Agreement and Annexes 16, 2 and 3 in it. The specific differences in the amount of remuneration for each employee are determined by the different influence of the individual indicators, criteria, coefficients, grades, educational qualifications and length of service, which is distinguished as general and acquired in the Company. As for each year of service, no matter where the service is acquired - "Class of service time" is 1% of the individual basic salary (IOZ), while for each year "Service time in the company" is accounted for 1.1%, but not more than 16,5%. Both factors are separate and independent from each other and are applied simultaneously and not separately, as the complainant points out. By comparing the particulars submitted, with the complainant's allegations, the latter falsely assumed that only the rate of 'service at the firm' had been taken in account when forming his monthly remuneration, since, as presented by the written evidence, apart from the two years of service in the company, the applicant was charged a coefficient - 2.2% (1.1% per year) for the total of his twenty-two years of service (in and out of "M" EAD), according to the "Collective Labor Agreement" mechanism, 22% % per year) on the base p.o. - BGN 380.81 (for 11 working days) equal to BGN 83.78. Similarly, the remuneration of certain employees, which the complainant refers to as comparison people, was also calculated in the same way.

The Panel found that the specific difference of 300 BGL between the remuneration of the applicant and the other three employees was due to the fact that for that particular month (January 2015) the applicant's basic salary (which was charged 22 % for "Served Time") is for only 11 working days during the month, as he was on a regular leave for the rest of the time (10 days), for which period the rate for "Served Time" is not calculated.

The realization of the principle embedded in Art. 14 of PfDA.: "Equal pay for equal work" implies the application of the same (common to all) criteria for the formation of the amount of remuneration for each of the employees of the company, regardless of the signs under Art. 4, para. 1 of PfDA. The concrete documents on the case file clearly show that, in relation to each of the employees of the respondent company - M. EAD (the applicant and the people referred by him for comparison), all the criteria for their remuneration, are reflected and applied in a uniform manner.

A second specialized permanent meeting of the Commission for Protection against Discrimination has issued a decision in which it is established that the employer company, according to the provision of Art. 14 of PfDA. has not allowed less favorable treatment as a form of discrimination within the meaning of Art. 4, para. 2 of the PfDA against the applicant, in view of which it has dismissed the complaint.

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An employee of a company thought his salary was unfairly lower than that of his colleagues. He falsely assumed it was miscalculated. However, he was absent on a leave for a portion of the time, which became the reason for his lower salary. CPD established that no discrimination had occurred, in view of which It dismissed the complaint.