

constituted as defending party, which 'in its capacity as their owner, is the sole legal entity that may undertake their replacement'.

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FIFTH special standing board of judges, in the light of assessing the collected proof of evidence, assumes that the procedures allow for moving ahead with the appeal of the parties prior to setting it into effect and therefore, it adjourns the hearing and constitutes Sofia Municipality as respondent under the case. The newly constituted party has been summoned for the next open hearing scheduled for 13 April 2010 while it has been allowed to review the materials under the case and to come up with an opinion.

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Attorney D. states: „We have no claims to the chief architect or to the other persons who have infringed the relevant legal regulations since the ultimate liability of providing accessible environment for the general public is born by the Client, the beneficiary of the ordered service. In our opinion, this party is Sofia municipality, but in the light of the relations between Sofia municipality and Metropolitan, it is possible that part of the violation of the rights of persons with disabilities may be shared by 'Metropolitan S' EAD as well.

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It is expressly stipulated that the objective of the expertise determines as '**accessible passage**' the definition in compliance with the p. 5 of § 1 of Regulation № 4 of 1 July 2009 for design, execution and maintenance of constructions in compliance with the requirements for accessible environment for the general public including for disabled people, issued by the Ministry of regional development and public works, while '**accessible entry**' shall be defined pursuant to the definition provided in p. 4 of § 1 of the Additional Provisions of that Ordinance.

A task has been assigned for conduct of inspection of **all operational metro stations** of Metropolitan in Sofia and subsequent preparation of a list of those stations that **have no equally accessible passage** from streets, pedestrian areas and stops of regular public transport lines and **equally accessible entries** of the passenger transport vehicles for people with or without disabilities. For the purpose of the task assigned to the expert, as '**equally accessible**' shall be treated only passages and entries of metro stations that enjoy completed built environment for the whole public consistent with the currently effective requirements of Regulation № 4 of 1 July 2009.

As a separate task, the outside expert has been asked to carry on site inspection at metro station 'Jolio Curie' in Sofia and to issue a final statement on the compliance of the building process with the requirements of the currently effective construction regulations for building access to people with visual impairment.

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A witness who is architect by employment has outlined his opinion in view of the construction of metro stations: "*Most of them are inaccessible and unsafe. For example the metro station at the University is unsafe even for the nearby passers. In direction club Yalta there is a rail that consists solely of a top grab rail and then a curb of 5 meters emerges. And this area is so busy with passengers and passers-by. Personally I would not take my kids for a walk there*".

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According to a testimony of a summoned witness: 'I read that apart from the condition that all new construction projects should apply rules of accessibility, the law lays down as a requirement submitted budget and program by all institutions and municipal

authorities in Republic of Bulgaria. I tried to search information about the budget and the program of Sofia municipality. I was not able to find any information in electronic form in any of the websites that provide such data. Perhaps I have not searched so thoroughly, but no public information is available on any budget and implementation program of Sofia Municipality for ensuring accessible environment”.

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The appointee of the constituted respondent party Directorate for National Construction Supervision /DNCS/ declared he has reviewed the materials under that case and submits its written statement to the parties, admitted and adjoined to the file. It is mentioned that following a check into the archive of DNCS it has been established that *‘there is a similar appeal notice filed by Mrs. Zoya Trifonova in her capacity as chairperson of Foundation ‘Center for Hope’ and an alert by Association ‘Sofia Architects’.* With regard to these alert notices DNCS ‘has responded accurately and by laying down proper reasons to the raised issues. It is specified that the signed appeals referring to the metro stations have been adopted and put into service by state authorized committees, appointed by the DNCS at the request of the Client. A Protocol Act 16 has been composed and signed by all committee members with ‘no objections’... It has been specified that the passage ways to metro station ‘Jolio Curie’ have been secured with access to disabled persons by lifts and appropriately curb cut ramps, respectively at metro station ‘Sofia University’ *and it has been indicated that the filed queries and appeals are beyond the competence of the DNCS, and any execution of additional construction works out of the scope of the approved metro designs, and connected with specific need of disabled people, should be addressed to Sofia Municipality.”*

Legal adviser Grozdanov considers that in this particular case *“DNCS has no legal powers to initiate further actions as long as these metro stations have been put into service pursuant to the due legal procedures”.* With reference to the question raised by the board of judges, if at the time of putting into service of a project DNCS observes the compliance of the facility with the requirements of art.169 of the Zoning Act, legal adviser Grozdanov affirms that: *“Upon issuance of Operational permit the objective of the committee that has been appointed in this particular case has been expressly to verify if the facility – metro station, located at Sofia University, in this particular case - **has been executed in compliance with the approved designs and the issued construction papers.”***

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After the board of judges has raised some doubts regarding the legitimacy of the position taken by that party, legal adviser Grozdanov declares that, *„If DNCS eventually carries on site inspection, virtually speaking, and detects discrepancies with the prescribed construction permits, then it shall have the competence to intervene and undertake subsequent actions. If the Directorate detects that the facility has been constructed in compliance with the issued construction papers, enforced construction permits and approved designs, then the DNCS is unable to proceed in whatsoever way, as it has no legal powers in case of enforced ...”* construction permit, that is issued by the chief architect of Sofia, who on his part, also approves the designs.

Attorney Denev disagrees with this statement and points out that it is duty of DNCS not only to check if the construction is consistent with the building permits and designs, but *‘If all these construction papers do not comply with the law, DNCS is fully entitled to deny issuance of operational permit for the relevant facility. DNCS may prescribe mandatory instructions and guidelines during the ongoing construction progress. Actually, this is the authority with the most extensive and stringent competence with respect to the observance of the law in the area of construction, i.e. the construction regulations and rules.’*

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In order to rule a decision, **FIFTH special standing board of judges** considered that art.4 of the Protection against Discrimination Act prohibits any direct or indirect discrimination on the basis of ‘disability’. The wording of art.5 of the PDA considers **building and maintenance** of urban built environment that sets **impediments to the access** of disabled people to a public place, as discrimination.

The concise definition of this particular infringement in the PDA is certainly involved with art.32 of the Integration of Disabled Persons Act (IDPA) assigning as duty of the state and local administrative authorities to organize the development and structuring of urban areas for the community, including for disabled people, pursuant to the definitions of § 6 of the transitional and final provisions of the IDPA, and under the terms and conditions prescribed by the Zoning Act. Pursuant to art.64, para 1, p. 1 and para 2 of the Zoning Act the **transport physical infrastructure and the pertaining facilities thereto - bridges, tunnels, overpasses, underpasses etc.** constitute elements of the mechanical infrastructure designed in zoning sketches and plans complemented by specific schemes containing information on the type, size and technical features of the physical infrastructure elements. Para 3 and 4 of this article specify that the facilities of the physical infrastructure shall be **constructed, maintained and repaired, by and, at the expense of the State, municipalities or relevant utility companies**, unless otherwise provided by special statute whereas the design and construction of physical infrastructure works shall be carried out under standard procedures established by the Zoning Act.

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The analysis of the aforementioned provision concludes that if the facilities of the **transport physical infrastructure** have not been designed, executed and maintained in compliance with the requirements for accessible environment of the community, then the available urban built environment **has been built** in a way that **impedes the access** of disabled people to public places, and this constitutes discrimination and violation of art.5 of the PDA.

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In view of the aforementioned **FIFTH special standing board of judges** makes an assessment that by its failure to act in 2009 for implementing community amenities and recreational facilities as well as for reorganization, reconstruction and refurbishment of the existing communication-transport facilities, the client Sofia municipality and municipal company Metropolitan EAD, which has been assigned by contract the investment, preparation, organization and design supervision on behalf of Sofia municipality, by not fulfilling the requirements under art.2 of the effective at that moment Regulation № 4 of 01 July 2009, and in accordance with the same article of the preceding Regulation № 6 of 26 November 2003, have admitted **construction** of urban built environment that **hinders the access** of disabled people to public places, constituting infringement pursuant to art.5 of the PDA, and direct discrimination on the basis of ‘**disability**’ pursuant to art.4, para 1 and 2 of the PDA.

As long as Sofia municipality and Metropolitan EAD have not fulfilled an obligation thereto arising from art. 5 of the PDA, and the infringements have been induced upon providing services as legal entity, the board of judges rules that pursuant to art.80, para 2 of the PDA Sofia Municipality and Metropolitan EAD shall be separately levied penalty payments up to maximum size of BGN 2500 as the infringement has provided substantial restrictions for physically disabled persons with wheelchairs in using the most updated urban public transport facility in Sofia city.

With respect to the aforementioned infringement **FIFTH special standing board of judges** assumes the assertion of the appointee of DNCS claiming that by issuing

Operational permit, DNSC is liable solely for the compliance of the construction with the approved investment design, cannot be adopted. Pursuant to art.4, para 1 and 2 of the Rules of Procedure of DNSC, in force at the time of the lawsuit, (prom. SG. issue 49 of 16.06.2006 in force as of 01.04.2006, repealed SG, issue 7 of 26.01.2010), the Directorate exerts control on the observance of the Zoning Act and the regulatory acts concerning its field of application in design and construction, **including in terms of ensured accessibility**, and the rest of the legal framework regulating the construction sites while **supervising all construction projects** on the territory of Republic of Bulgaria, and **the actions of the local authorities and the parties involved in the construction process**. It is beyond any doubt that in its capacity as a state body, which should take all proper and necessary measures for fulfillment the terms of the Protection against Discrimination Act pursuant to art 10 thereto, and in its capacity as specialized state authority under the Zoning Act for supervising constructions and actions of **the local authorities and the parties involved in the construction process**, DNSC bears the obligation to **provide accessibility**. Moreover, the present board of judges considers that in this particular case it is exactly the supervising power of DNSC that is of utmost significance according to the requirements of art.10 of the PDA.

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With regard to the aforementioned, **FIFTH special standing board of judges** recognizes that by its failure to act in 2009, at the time of issuance Operational permit № CT-05-1047 of 04.09.2009 to the Client Sofia municipality, by not conducting thorough inspection of the actions of the local administration and **the parties in the construction process**, the Directorate for national construction supervision has admitted **establishment** of urban built environment that **inhibits the access of disabled people** to public places, and this represents infringement pursuant to art.5 of the PDA and direct discrimination on the basis of **'disability'** in accordance with art.4 para 1 and 2 of the PDA, and simultaneously, violation of art.10 of the PDA.

As far as the state authority Directorate for national construction supervision (DNCS), constituted in its capacity as defendant party under the case, has not fulfilled its obligations arising from art.5 and art 10 of the PDA, and the infringements have been committed while performing services as a legal entity, the court board assumes that pursuant to art.80, para 2 of the PDA DNCS should be levied penalty payment for the maximum amount of BGN 2500 as the infringement has provided substantial restrictions for all physically disabled users with wheelchairs when using the most updated urban public transport facility in Sofia city.

In the course of the proceedings, Metropolitan EAD committed itself to removing the obstacles for passengers with wheelchairs, caused by the position of the doors of the constructed lift. However, that was not the position of the other defendant constituted under the case - Sofia municipality. The evidence taken under the case undisputable indicated that Sofia municipality is owner of the infrastructure of Metropolitan, owns the utility enterprise 'Metropolitan'EAD and as a territorial authority, it regulates the routes and conditions for providing public passenger transport in the city and further, sets out the fees for the various public transport services.

On the other hand, Sofia municipality is owner of the underpasses, is a territorial authority that controls the creation of accessible urban built environment in the urban areas of new construction and next, is obliged, in accordance with § 6 of the Transitional and final provisions of the Integration of Disabled People Act, to ensure free access for disabled people until 31 December 2006, to public facilities and amenities by removing and adjusting the relevant architectural, transport and communication barriers.

Regardless of the responsibility of the City mayor pursuant to art.169, para 2, second sentence of the Zoning Act, in the course of the proceedings neither any drafted

programs containing measures to adjust the existing underpass in conformity with the requirements for accessible environment, nor any scheduled funds for implementing such measures, have been provided.

Sofia municipality did not submit whatsoever evidence that might support a conclusion in line with the provision of art.9 of the PDA that the right of equal treatment of disabled users of public transport has not been infringed. The board was left with the strong impression that the position of the appointee of Sofia city mayor entirely rejects the clear notion that the traffic organization along the streets and intersections as well as the created accessibility to underpasses, considerably restricts the use of metro stations by disabled people, and not only sets impediments, but in most cases renders impossible the use of metro lines by disabled people.

Based on the aforementioned facts, **FIFTH special standing board of judges**, after surveying in detail the applicable law, all taken evidence and complaints contained in the notice of appeal of the chairperson of Foundation 'Center for Hope' Zoya Trifonova Trifonava as well as the complaint of Ludmil Borislavov Velchev, recognized that the claim of the appointee of foundation 'Center for Hope' for extending the subject matter of the appeal is reasonable and should be honored.

Based on these reasons and in compliance with the legal definitions of accessibility contained in Regulation № 4 of 01.07.2009, currently in force, the board of judges assigned to the outside expert to carry out site inspection of all operative metro stations of Metropolitan in Sofia city, and to draft a list of those stations that do not provide equally accessible passages from streets, pedestrian areas and stops of the regular lines of public transport vehicles for persons with or without disabilities. For the purpose of the assigned task to the expert, 'equally accessible' shall refer explicitly to passages, routes and entries of metro stations with constructed accessible urban built environment for the whole community, consistent with the effective at the moment requirements of Regulation № 4 of 01.07.2009 for design, execution and maintenance of constructions in compliance with the requirements for accessible environment for the community, including for disabled people, issued by the Ministry of regional development and public works.

The prepared expertise has not been contested by the constituted respondent parties and it undisputably establishes that only in 8 out of the existing total 14 metro stations have been fulfilled the requirements for accessibility pursuant to Regulation № 4 of 01.07.2009 related to installation of tactile warning strips on the platforms of the metro stations whereas the remaining six stations – 'Obelya', 'Lyulin', 'Zapaden Park', 'Konstantin Velichkov', 'Serdika' and 'Jolio Curie' do not conform with the requirements of Regulation № 4 of 01.07.2009 concerning this element of accessible built environment.

It has been established beyond doubt that in three of totally completed 14 metro stations, namely 'Slivnitza', 'Zapaden park' and 'Konstantin Velichkov' absolutely no accessible entries to the underpasses have been provided, which renders it impossible their use by people with disabilities. In four other underpasses located at metro stations 'Lyulin', 'Opalchenska', 'Serdika' and 'Sofia University St Climent Ochridski' accessibility is provided from sidewalk level to underpass level and the respective metro entries only by a single lift, which hampers the access of disabled persons, and treats them more unfavorably compared to the remaining passengers, because of the absence of entries providing equal access for all and absence of accessible passage under complicated traffic situation on street level. The absence of accessible passage on street level sets impediments to the people with disabilities using metro station 'Mladost 1' despite the erected entries with equal access at this station as well as at the underpasses to metro stations 'Obelya', 'Stadium Vassil Levski', 'Jolio Curie', 'G.M' Dimitrov' and 'Musagenitsa', which comply with the requirements for accessibility of Regulation № 4 of 01.07.2009 concerning these elements of the accessible built environment. In the progress of the proceedings the constituted defendant Sofia

municipality and its appointee made no reference to any completed program measures aiming at adjusting the existing inaccessible underpasses in compliance with the requirements for accessible environment, or to any allocated funds for implementing actions in conformity with the stipulations of art.169, para 2, second sentence of the Zoning Act.

The identified factual evidence sets forth the conclusion that Sofia municipality maintains utterly inaccessible underpass entries at metro stations ‘Slivnitza’, ‘Zapaden park’ and ‘Konstantin Velichkov’, partially inaccessible underpass entries at metro stations ‘Lyulin’, ‘Opalchenska’, ‘Serdika’, ‘SU St Climent Ochridski’ and ‘Mladost 1’, and maintains the platforms of metro stations ‘Obelya’, ‘Lyulin’, ‘Zapaden park’, ‘Konstantin Velichkov’, ‘Serdika’ and ‘Jolio Curie’ without the appropriate elements of the accessible urban built environment – tactile warning strips, which impedes the access of people with disabilities to these public facilities that are municipal public property.

With regard to the aforementioned, **FIFTH special standing board of judges** adopts as evident that by failing to enact measures for building accessible entries at the underpasses of metro stations ‘Slivnitza’, ‘Zapaden park’ and ‘Konstantin Velichkov’; by failing to enact measures for building equally accessible entries for all and entries with accessible passage to the underpasses of metro stations ‘Lyulin’, ‘Opalchenska’, ‘Serdika’, ‘SU St Climent Ochridski’ and ‘Mladost 1’, as well as to install tactile warning strips on the platforms of metro stations ‘Obelya’, ‘Lyulin’, ‘Zapaden park’, ‘Konstantin Velichkov’, ‘Serdika’ and ‘Jolio Curie’, complying with the requirements for accessibility contained in Regulation № 4 of 01.07.2009, Sofia municipality has admitted, by its failure to act accordingly, establishment of urban built environment that hinders the access of persons with disabilities to public places and community facilities, representing municipal property, constituting infringement pursuant to art.5 of the PDA and direct discrimination on the basis of ‘disability’ pursuant to art.4, para 1 and para 2 of the PDA, and at the same time, infringement of art.10 and 11 of the PDA.

FIFTH special standing board of judges finds it necessary, in accordance with art.76, para 1, p.1 of the PDA, in order to cease the aforementioned infringements on the basis of ‘**disability**’ caused by maintenance of inaccessible urban built environment to public facilities that are municipal ownership, as well as to avoid and remove the harmful consequences arising from these, to prescribe mandatory notice to the city mayor, to submit in line with its assigned duties under art.10 and art 11, para 1 of the PDA, in two month period after stipulation of the judgment, to the Commission for protection against discrimination, a specially designed program containing measures pursuant to art. 169, para 2, second sentence of the Zoning Act for providing proper accessibility to the existing metro stations of Metropolitan on the territory of Sofia municipality, in accordance with § 6 of the Supplementary provisions of the Intergration of Disabled People Act.

In the course of drafting these actions for establishment of accessible urban built environment in the existing stations of Metropolitan, the non-governmental organizations of disabled persons should be notified by Sofia municipality about the anticipated budget, the number of the facilities and the scope of conducted actions, and consultations should be carried out in view of coordinating the appropriateness and sequence of the conducted actions.

Governed by the aforementioned, **FIFTH special standing board of judges** of the Commission for protection against discrimination, pursuant to art.65 of the PDA

GIVES THE FOLLOWING JUDGMENT:

RULES that the absence of tactile warning strips on the platform of metro station ‘Jolio Curie’, executed in compliance with the requirements of Regulation № 4 of

01.07.2009, and forming an element of accessible urban built environment, leads to providing of transport services by Metropolitan EAD to people with visual impairment, **of inferior quality and under more unfavorable conditions**, which constitutes more unfavorable treatment on the basis of ‘disability’, and direct discrimination in accordance with art.4, para 2 with reference to art.5 and art.37 of the PDA.

For the commitment of the aforementioned violation, performed while providing transport services as legal entity, in accordance with art. 80, para 2 of the PDA, the board **LEVIES PENALTY PAYMENT** up to the maximum amount of BGN 2500 to the legal person Metropolitan EAD, since the absence of tactile warning strips on the platform has been identified on six metro stations overall, while failure to conform with the requirement for accessibility for people with impaired vision, is hazardous for the life of people with such disability.

RULES that by its failure to act in 2009, while carrying on the community amenities and recreational works as well as reorganization, reconstruction and refurbishment of the existing communication-transport facilities, the respondent parties - Sofia municipality as a Client, and municipal company Metropolitan EAD, which has been assigned by contract the investment, preparation, organization and design supervision of metro station ‘SU St Climent Ochriski’ on behalf of Sofia municipality, by not fulfilling the requirements under art.2 of the effective at that moment Regulation № 4 of 01 July 2009, and in accordance with the same article of the preceding Regulation № 6 of 26 November 2003, have admitted construction of urban built environment that hinders the access of disabled people to public places, constituting infringement pursuant to art.5 of the PDA, and direct discrimination on the basis of ‘disability’ pursuant to art.4, para 1 and 2 of the PDA.

For the commitment of the aforementioned violation, performed while providing transport services by Sofia municipality and Metropolitan EAD as legal entities, in accordance with art. 80, para 2 of the PDA, the panel **LEVIES** to the legal persons Sofia municipality and Metropolitan EAD **PENALTY PAYMENT** up to the maximum amount of BGN 2500, since the violation has caused substantial restrictions for all persons with physical disabilities, using wheelchairs in metro station ‘SU St Climent Ochriski’, and hindered access to the metro station of the affected person Ludmil Borislavov Velchev.

RULES that by its failure to act in 2009, at the time of issuance Operational permit № CT-05-1047 of 04.09.2009 for metro station ‘SU St Climent Ochriski’ to the Client Sofia municipality, by not conducting thorough inspection of the actions of the local administration and the parties in the construction process, the Directorate for national construction supervision has admitted establishment of urban built environment that inhibits the access of disabled people to public places, and this represents infringement pursuant to art.5 of the PDA, and direct discrimination on the basis of ‘disability’ in accordance with art.4 para 1 and 2 of the PDA, and simultaneously, violation of art.10 of the PDA.

For the commitment of the aforementioned infringements of art.5 and art.10 of the PDA, conducted as part of the activity of a legal person, pursuant to art.80, para 2 of the PDA, the panel **LEVIES** to the Directorate for national construction supervision **PENALTY PAYMENT** up to the maximum amount of BGN 2500, since the violation has caused substantial restrictions for all persons with physical disabilities, using wheelchairs in metro station ‘SU St Climent Ochriski’ and hindered access to the metro station of the affected person Ludmil Borislavov Velchev.

RULES that by failing to enact measures for building accessible entries at the underpasses of metro stations ‘Slivnitza’, ‘Zapaden park’ and ‘Konstantin Velichkov’; by

failing to enact measures for building equally accessible entries for all and entries with accessible passage to the underpasses of metro stations ‘Lyulin’, ‘Opalchenska’, ‘Serdika’, ‘SU St Climent Ochriski’ and ‘Mladost 1’, as well as to install tactile warning strips on the platforms of metro stations ‘Obelya’, ‘Lyulin’, ‘Zapaden park’, ‘Konstantin Velichkov’, ‘Serdika’ and ‘Jolio Curie’, complying with the requirements for accessibility contained in Regulation № 4 of 01.07.2009, Sofia municipality has admitted, by its failure to act accordingly, establishment of urban built environment that hinders the access of persons with disabilities to public places and community facilities, representing municipal property, constituting infringement pursuant to art.5 of the PDA, and direct discrimination on the basis of ‘disability’ pursuant to art.4, para 1 and para 2 of the PDA, and at the same time, infringement of art.10 and 11 of the PDA.

In order to cease the aforementioned infringements on the basis of ‘**disability**’ caused by establishment of inaccessible urban built environment to public facilities that are municipal ownership, as well as to avoid and remove the harmful consequences arising from these, pursuant to art.76, para 1, p.1 of the PDA, provides **MANDATORY PRESCRIPTIVE ORDER** to the city mayor, to submit in line with its assigned duties under art.10 and art 11, para 1 of the PDA, **in two month period** after stipulation of the judgment, to the Commission for protection against discrimination, a specially designed program containing measures on providing appropriate accessibility to the existing metro stations of Metropolitan on the territory of Sofia municipality pursuant to art. 169, para 2, second sentence of the Zoning Act.

Pursuant to art.76, para 1, p.1 of the PDA provides **MANDATORY PRESCRIPTIVE ORDER** to the mayor of Sofia when scheduling the actions for establishment of accessible urban built environment to the existing stations of Metropolitan, to notify the non-governmental organizations of disabled persons about the anticipated budget, number of the facilities and scope of conducted actions, and to carry out consultations with them, in view of coordinating the appropriateness and sequence of the conducted actions.

This judgment shall be sent to the parties constituted under the file.

This judgment may be appealed before the Administrative court in Sofia through the Commission for protection against discrimination by the standard procedure of the Administrative Procedure code **within 14 /fourteen/ days** after its receipt.

PRESIDENT: Anely Chobanova :
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MEMBERS: prof. Blagoy Vidin :
Rositsa Georgieva :