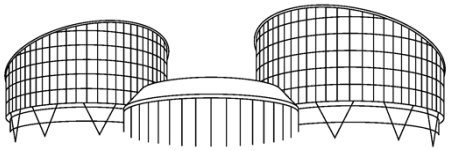

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF T.H. v. BULGARIA

(Application no. 46519/20)

JUDGMENT

Art 14 (+ Art 2 P1) • Discrimination • Right to education • Primary school's response, including reasonable adjustments, to aggressive and disruptive behaviour of child diagnosed with hyperkinetic and scholastic-skills disorder • Objective and reasonable justification for different treatment • School (head teacher and teacher) engaged in a difficult balancing act between applicant's and classmates' interests, including their safety, well-being and effective education • Art 14 not requiring all possible adjustments to alleviate disparities resulting from someone's disability regardless of costs or practicalities involved

STRASBOURG

11 April 2023

FINAL

11/07/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of T.H. v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 46519/20) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr T.H. ("the applicant"), on 14 October 2020;

the decision to give the application priority;

the decision to (a) give the Bulgarian Government ("the Government") notice of the complaint under Article 14 of the Convention about the way in which the applicant was treated at the school which he attended in years one and two, and (b) declare the remainder of the application inadmissible;

the decision not to disclose the applicant's name;

the parties' observations;

Having deliberated in private on 14 March 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The chief questions in this case are whether staff of the school which the applicant – a child who had behavioural difficulties and was subsequently diagnosed with a hyperkinetic disorder and a specific developmental disorder of scholastic skills – attended in years one and two discriminated against him by treating him less favourably on grounds of his disability, contrary to Article 14 of the Convention, and reasonably accommodated that disability, as required under that provision.

THE FACTS

2. The applicant was born in 2004 and lives in Sofia. He was represented by Mr Y. Georgiev, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Ms I. Nedyalkova of the Ministry of Justice.

I. THE APPLICANT'S PRIMARY SCHOOLING

A. Events preceding the applicant's enrolment in primary school

4. The applicant was due to begin primary school in September 2011, just before turning seven (the age at which school becomes compulsory in Bulgaria). His parents selected a mainstream municipal school which was close to their home and which offered English lessons from year one.

5. A report drawn up by the school's pedagogical advisor in September 2011 recorded that a routine aptitude test which the applicant had taken in March 2011 in the presence of his father had shown that it was borderline whether he was ready to start school. He had, in particular, exhibited behavioural problems and cognitive dysfunctions which could complicate the process of learning and adapting at school. His father had said that the kindergarten teachers and he and the applicant's mother had been having difficulties controlling his behaviour. The report went on to suggest that work with a speech therapist could avert serious educational difficulties, and that if the applicant's parents and his teacher wished, it was also possible to involve the school's psychologist and consult with child-development specialists.

6. In June 2011 the school's head teacher telephoned the applicant's father to invite him to discuss the test results and the expected difficulties with the applicant's education and what could be done about them, but he apparently refused to meet with her at that time.

B. Year one (2011/12)

1. Events during the first term and the beginning of the second term

7. At the end of September 2011, about a week after the beginning of the school year, the applicant's teacher contacted the pedagogical advisor to seek her help with difficulties that she was facing with his adaptation period. About two days later the teacher and the pedagogical advisor met with the applicant's mother and informed her of his challenging behaviour at school.

8. At the beginning of October 2011, the applicant's parents agreed that he should start working with the pedagogical advisor. In the course of the ensuing proceedings before the Commission for Protection from Discrimination (see paragraph 55 below), the pedagogical advisor testified that she had worked with the applicant's class once a month.

9. On an unspecified date in the autumn of 2011, probably 25 November, the pedagogical advisor and the applicant's teacher met with the applicant's parents again. A third meeting was held on 15 December 2011. According to the applicant's parents, at that meeting they were accused of not raising him correctly. The Government retorted that there was no evidence that such a thing had been said. According to a report by the pedagogical advisor and the teacher drawn up the day after the meeting, they had conveyed to the

applicant's parents their concern about a deterioration in the applicant's behaviour, but had been faced with a lack of understanding about the nature of the problem. They had recommended consultations with a family therapist, and the pedagogical advisor had suggested one such therapist. The applicant's parents had stated that they would review the proposal and seek appropriate consultations. It does not appear that they followed up on the proposal. According to them, between December 2011 and March 2012 the applicant continued attending school without them being advised of any problems with his behaviour.

2. Meeting of the school's commission for the prevention of anti-social behaviour

10. On 15 March 2012 the school's commission for the prevention of anti-social behaviour met, apparently on the initiative of the applicant's teacher and the head teacher, to discuss the applicant's case. His parents also attended the meeting. According to a contemporaneous record of the meeting, the applicant's teacher described his challenging behaviour, saying in particular that he was provoking other children and then observing how they embarrassed themselves and were punished, and that it was not possible in some lessons, in particular English language, to teach under normal conditions. The head teacher, the deputy head teacher and the applicant's teacher insisted that the applicant's behaviour ran counter to the school's rules and that the need to control it was preventing other pupils from getting the requisite attention and education. The applicant's mother said that his teacher and she and his father were working to improve his behaviour, and that, in her view, it was getting better. The head teacher noted that the applicant's poor reputation from kindergarten had preceded him, and that some parents had unenrolled their children from the school as soon as they had learned that he would be attending it. She suggested that the applicant's teacher and parents try jointly to tackle his situation. The applicant's mother said that the family had contacted psychologists but could not afford their fees. The pedagogical advisor replied that she could consult parents as well, but her offer was apparently not taken up, and it was eventually agreed that the applicant's parents would seek independent psychological advice. The head teacher warned them that if the applicant's behaviour did not improve, he would be referred to the school's pedagogical council with a proposal that he be punished.

11. According to the applicant, at that meeting his teacher threatened his parents that she would recommend to the parents of his classmates to complain about him, so he would have no choice but to leave the school. The Government noted that there was no evidence that such a thing had been said.

3. Incidents in March 2012

12. According to the applicant, during a break between lessons on 19 March 2012 he was assaulted by other pupils, pushed to the ground and scratched on the forehead. The same day his father obtained a medical certificate for that injury. Two days later the applicant's mother wrote to the head teacher about the incident and requested that steps be taken to ensure his safety at school. The head teacher replied the same day that she would investigate the matter. According to a complaint to the school dated 22 March 2012 by the mother of the boy who had allegedly scratched the applicant, the applicant had been systematically harassing him, calling him a "stupid animal", "baby", "midget" and a "dimwit", telling him "your mother died today", scribbling on his clothes with a marker, trying to destroy his school supplies, spitting in his face, disturbing him in the toilet, and kicking him in the groin, most recently on 19 March. All that had caused her son to defend himself. According to the head teacher's submissions in the ensuing proceedings before the Commission for Protection from Discrimination (see paragraph 50 below), she had investigated the incident and had found that the applicant had not been assaulted by other pupils, but had on the contrary kicked the other boy. This was also stated in a report to the head teacher dated 21 March 2012 by the music teacher, who had witnessed the aftermath of the incident and taken the other boy to the school's resident nurse for a medical examination.

13. According to the applicant, during a break between lessons a week later, on 27 March 2012, he was stabbed on the forehead with a pen. The same day his mother wrote to the head teacher about the incident, reiterating her request that steps be taken to ensure his safety. According to the head teacher's submissions in the ensuing proceedings before the Commission for Protection from Discrimination (see paragraph 50 below), she had investigated the incident and had found that the stabbing had been an accident and that the teacher had advised the parents of the pupil who had done it about the incident.

14. On 23 March 2012 the mother of another classmate of the applicant complained to the head teacher that the applicant had been kicking her daughter and pulling her hair.

15. On 29 March 2012 seventeen parents of classmates of the applicant complained to the head teacher about him. They alleged that he had been misbehaving, provoking his classmates with insults and aggressive behaviour, bringing a screwdriver to school and threatening his classmates with it, cutting the hair of other children and their school supplies with scissors, hitting and kicking them during breaks, and rummaging through their bags and taking items belonging to them.

4. Work with Animus

16. In the meantime, on 19 March 2012 the applicant's parents wrote to the local child-protection authority to seek its assistance with arranging for him to be examined by an independent psychologist. They also expressed their misgivings that the applicant might be ill-treated following the meeting of the school's commission for the prevention of anti-social behaviour (see paragraph 10 above). On 9 April 2012 that authority referred them to Animus, a foundation specialising in rehabilitation, counselling and psychotherapy, for it to provide psychological consultations with the family for a period of six months.

17. On the initiative of Animus, on 24 April 2012 its director and the two psychologists who were working with the applicant and his parents met with the parents, the head teacher, the applicant's teacher and the school's pedagogical advisor to discuss the applicant's situation. The head teacher warned that the applicant would likely be punished, but took it upon herself to try to persuade the school's pedagogical council to limit the sanction to a warning that the applicant would be transferred to another school. In its report about the meeting, Animus expressed the view that it would be counterproductive to transfer the applicant to another school, and stated that its specialists had begun consultations with him and his parents.

5. Disciplinary sanction imposed on the applicant

18. On 18 May 2012 the school's pedagogical council met in the presence of the applicant's parents to discuss his behaviour. It was presented with a table detailing forty-nine occasions between January and May 2012 on which the applicant had misbehaved in class.

19. In her written report to the council, the applicant's teacher described the problems with his behaviour, stating in particular that he systematically failed to abide by the school's rules, was aggressive to other pupils and teachers, had no wish to engage with the teaching process, especially in English-language lessons, and did not respect authority. She went on say that she had tried to tackle that behaviour, talking often with his parents and forming a team consisting of all the teachers dealing with his class and the pedagogical advisor. Those efforts had unfortunately been fruitless, and the applicant's behaviour had remained challenging, which had led to complaints by the parents of other pupils. She proposed that he be punished with a warning that he would be transferred to another school.

20. At the meeting of the council, the applicant's teacher again recounted the problems with the applicant and the steps taken to tackle them, and proposed that he be punished with a warning that he would be transferred to another school. The head teacher referred to the complaint by parents of classmates of the applicant (see paragraph 15 above), described his work with Animus (see paragraph 16 above), and endorsed the teacher's proposal.

Several other teachers also referred to incidents with the applicant and stated that he was systematically disrupting lessons and acting aggressively towards his classmates. The applicant's parents opposed the proposal. According to them, the displays of aggression on his part had been rare and provoked by teachers. They were trying to tackle his behaviour, but his teacher had not kept up her initial efforts to ensure that his adaptation period at school went well. They urged the council to give the applicant a chance and said that they hoped that his behaviour would improve as a result of the psychological programme in which he had been enrolled. The pedagogical advisor said that in her view a sanction against the applicant would have a therapeutic effect.

21. At the end of the meeting the pedagogical council recommended to the head teacher, by thirty-eight votes to zero with three abstentions, to punish the applicant with a warning that he would be transferred to another school. Three days later, on 21 May 2012, the head teacher made an order in those terms, but deferred the disciplinary sanction until the beginning of the next school year in September 2012. The applicant's parents did not avail themselves of the possibility to appeal against the order to the regional education inspectorate.

22. On 10 July 2012 the applicant's parents wrote to the head teacher to contest the order, alleging also that the applicant's teacher had on many occasions pulled his hair and ears, chased him out of class, left him without breakfast, twice made him stand upright for four hours without being able to get water or food or go to the toilet, and had instructed an older pupil to search his pockets. All that had distressed the applicant and had demotivated him from going to school. In her reply to that complaint, dated 12 July 2012, the teacher denied those allegations. She explained, specifically with reference to the pocket-searching allegation, that on one occasion a former pupil of hers had come to see her and had rushed to take a screwdriver which the applicant had been pointing at a classmate.

C. Year two (2012/13)

1. Formal diagnosis of the applicant's disorders and steps taken with a view to accommodating his recognised special educational needs

23. Psychologists from Animus (see paragraph 16 *in fine* above) continued working with the applicant throughout the summer of 2012 and in September referred him for assessment to a child psychiatry clinic. Having assessed him, on 27 September 2012 three specialists from the clinic formally diagnosed him with a hyperkinetic disorder and a specific developmental disorder of scholastic skills, and stated that he could on that basis be recognised as having special educational needs. They recommended that he follow an individual education plan and be assisted by a resource teacher and a speech therapist.

24. On 4 October 2012 the applicant's parents informed the head teacher of the clinic's findings and asked her to convey its recommendations to his teacher.

25. A week later, on 11 October 2012, representatives of Animus, including the psychologists dealing with the applicant and his parents, met with the head teacher, the applicant's teacher, the school's pedagogical advisor and the applicant's parents to discuss the applicant's situation in the light of the formal diagnosis of his disorders. The applicant's father claimed that his teacher had had a negative effect on the applicant's development because she was aggressive towards him, and that the teacher of another class dealt better with children with special educational needs. For her part, the applicant's teacher expressed her exasperation with his case and the lack of proper communication with his parents. The head teacher rejected the suggestion that the applicant should move to another class, on the basis that the school had a policy of having only one child with special educational needs per class, and proposed education on an individual basis with the same teacher and that he be with other pupils only during breaks between lessons. In an ensuing report to the regional education inspectorate dated 15 January 2013, the head teacher explained that in her view moving the applicant to another class would not resolve his problem and accommodate his needs, because in the view of the school psychologist and the psychologist from Animus working with him, his challenging behaviour would continue in the school environment, irrespective of the personalities of his teacher and his classmates. In a subsequent complaint to the social-assistance authorities, the applicant's parents stated that they could not agree with the proposal of education on an individual basis, since in their view it was important for him to interact with his classmates in class rather than only during breaks, and that in their view the only solution was for him to be moved to another class.

26. On 15 October 2012, having assessed the applicant at the request of his father, a complex pedagogical assessment team from the regional education inspectorate certified that he had special educational needs and recommended that he be provided with integrated education in a mainstream school and be assisted by a resource teacher, speech therapist and a psychologist.

27. Two days later, on 17 October 2012, the applicant's parents brought that recommendation to the head teacher's attention. The following day, 18 October 2012, the head teacher sent to the applicant's mother a draft individual education plan, noting that it envisaged two lessons a week with a resource teacher, and invited her to come to the school to lodge a formal request in that connection.

28. On 6 November 2011 the applicant's mother formally requested that he be assisted by a resource teacher. The same day the head teacher appointed a team consisting of the applicant's teacher, a speech therapist, a psychologist and a resource teacher to assess the applicant's educational needs and devise

an individual plan for him. The plan, which covered the rest of the school year, was completed on 9 November 2012. It was approved by the applicant's mother two months later, on 10 January 2013.

29. According to her subsequent testimony before the Commission for Protection from Discrimination (see paragraphs 50 and 55 below), the resource teacher started working on a one-to-one basis with the applicant in November 2012. In a report to the head teacher dated 18 December 2012, the resource teacher recorded that the applicant's parents had informed her of his precise diagnosis with three weeks of delay, that he was trying to sabotage her work, and that at the insistence of his parents she had increased the number of weekly lessons she had with him from two to three, but that this had happened at the expense of the other pupils with whom she was working. She could not increase the number of lessons with the applicant further, since her group consisted of thirteen pupils and she could teach a maximum of thirty lessons per week.

30. Throughout that time, the applicant also continued attending regular lessons. He was on a number of occasions off school for medical reasons.

2. Rescission of the applicant's disciplinary sanction

31. Meanwhile, on 8 November 2012 the head teacher, citing the applicant's conditions (see paragraph 23 above), rescinded the disciplinary sanction imposed on him in May 2012 (see paragraph 21 above). It is unclear whether the applicant's parents were notified of that decision.

3. Incidents and complaints between October 2012 and January 2013

(a) Incidents in October 2012

32. The applicant alleged that on 4, 5, 8 and 9 October 2012 he had been "hit, humiliated, and called a liar and a good-for-nothing". He also alleged that he had regularly been given poor marks and been reprimanded without cause. His teacher had turned his classmates against him, as a result of which several of them had assaulted him during a break between lessons in the playground.

33. In an email to the head teacher dated 8 October 2012, the applicant's mother described a fight on 5 October 2012 between the applicant and two girls from his class, alleging that it had occurred because earlier his teacher had called him "a good-for-nothing". She went on to allege that the previous day, 4 October 2012, classmates of the applicant had thrown his pencils into the rubbish bin in his absence during a break, and that the teacher had not believed his allegations about the incident. The applicant's mother expressed her concern that he was being singled out, given poor marks and reprimanded with a view to humiliating him in the eyes of his classmates and excluding him from school.

34. In a further email to the head teacher dated 10 October 2012, the applicant's mother alleged that on 8 October a group of his classmates had assaulted him during a break, and that on 9 October 2012 the teacher had called him a "liar" in front of the class because he had told his parents about what had been happening at the school. The applicant's mother went on to contend that the teacher was trying to conceal her words by harassing the children physically and psychologically.

35. In a report to the head teacher dated 10 October 2012, the deputy head teacher recorded that the same day the applicant's father had complained to her that (a) on 8 October 2012 classmates of the applicant had assaulted him and pushed his breakfast to the ground, and that (b) the applicant's teacher had been insulting and humiliating him and turning his classmates against him. Immediately after that conversation the deputy head teacher had spoken to the applicant's classmates and had established that he had dropped his sandwich on the ground and had then thrown bits of it towards a classmate of his and had kicked her. Seeing this, other classmates had intervened and had kicked him, and an older pupil had then broken up the fight. The applicant's classmates had also denied ever hearing the teacher insult the applicant and had said that she had only scolded him when he had not wished to work in class. The deputy head teacher had also asked the applicant himself whether his teacher had insulted him, and he had replied that she had told him "bungler, stand up". His classmates had all stated that this allegation was untrue. Being then pressed to say why he was making up such stories, the applicant had replied that his teacher wished to move him to another school. In response to a further question as to why he thought that, he had replied that his father had told him so. During the conversation, the applicant had been walking around the classroom, had spat on three desks, and had poured pencil shavings into another pupil's bag.

36. The applicant's parents reiterated all the allegations made by his mother in her emails (see paragraphs 33-34 above) in a formal complaint to the head teacher dated 11 October 2012.

(b) Incident on 9 November 2012

37. On 9 November 2012 the applicant's English-language teacher slapped him on the face. His mother complained to the head teacher about this in an email dated 12 November 2012; she also expressed her concern that the English-language teacher did not appreciate that the applicant had special educational needs. The applicant's parents reiterated the complaint on 11 December 2012 and insisted that the teacher be punished. Having heard the applicant's classmates and the teacher, on 14 December 2012 the head teacher formally reprimanded her by way of a disciplinary sanction, citing breaches of the school's internal rules.

(c) Complaint by the parents of the applicant's classmates

38. On 21 November 2012 seventeen parents of classmates of the applicant complained to the head teacher about his behaviour in school. They reiterated the allegations that they had made in March 2012 (see paragraph 15 above), and went on to say that the applicant often brought a covert sound-recording device to school and was thus breaching their children's and the teachers' right to privacy.

(d) Complaints by the applicant's parents and resulting inspection by the regional education inspectorate

39. Following complaints by the applicant's parents to various authorities, in mid-January 2013 two inspectors from the regional education inspectorate visited the school to investigate his case. In their report, dated 16 January 2013, they recorded that the school had not abandoned seeking a constructive dialogue with the applicant's parents and finding a solution which would satisfy all the parties involved, that the applicant had been provided with the requisite support, and that there was no evidence that the applicant's parents had been pressured, as they had claimed, to consent for him to be schooled on a one-to-one basis.

(e) Complaint by the head teacher to the police about the applicant's father

40. On 2 December 2012 the head teacher complained to the police that the applicant's father had entered the school without permission and acted aggressively towards teachers and pupils. The police cautioned him to refrain from such actions.

(f) Complaints by the applicant's parents in December 2012 and January 2013

41. On 11 December 2012 the applicant's parents complained to the head teacher that on 7 December 2012 his teacher had threatened that if he continued to disrupt lessons with his behaviour and to refuse to study, she would remove him from class, and that she had put pressure on them to move him to education on an individual basis or transfer him to another school. They asserted that the applicant had been removed from his English-language class as well. In an ensuing report to the regional education inspectorate dated 15 January 2013, the head teacher noted that when removed from class on 7 December 2012 the applicant had been supervised by the chief duty teacher, as required under the school's regulations.

42. On 10 January 2013 the applicant's parents complained to the head teacher that on 7 January 2013 his English-language teacher had removed him from class. They alleged that she had been doing that systematically, had displayed no wish to work with him, and had not attempted to ensure that his adaptation period went well. In her ensuing report to the regional education inspectorate (see paragraph 41 above), the head teacher noted that after he

had been removed from his English-language class on 7 January 2013, the applicant had been supervised first by her and then by the chief duty teacher, as required under the school's rules.

D. Interruption of the applicant's schooling in February 2013

43. On 4 February 2013 a child psychiatry clinic recommended that the applicant interrupt his schooling for the rest of the school year on the basis that his continued attendance was disruptive for the school environment and not conducive to his personal development and his forming of a constructive attitude. The clinic recommended that he continue his education by way of individual lessons with a resource teacher.

44. A week later, on 12 February 2013, the applicant's parents brought that recommendation to the head teacher's attention and asked her to allow him to interrupt his studies for the rest of the school year. Two days later, on 14 February 2013, the head teacher allowed the applicant to interrupt his schooling for medical reasons, effective the same day.

45. On 30 May 2013 an expert commission of the State Agency for Child Protection, which had inspected the school following a complaint by the applicant's parents in December 2012, gave instructions to the head teacher. The commission noted in particular that the head teacher had not cited any legal basis for her decision to allow the applicant to interrupt his schooling, and that by law education up to the age of 16 was compulsory. The school had thus interrupted the applicant's education without ensuring, in breach of the law, that it could continue on an individual basis. The commission instructed the head teacher to draw up and propose to the applicant's parents, by 28 June 2013, an individual education plan matching his specific needs.

E. Continuation of the applicant's education in other schools

46. In accordance with his parents' wishes, in 2013/14 the applicant transferred to another mainstream school, where he repeated year two. He then moved again and spent the first term of 2014/15 in a specialised school for children with learning disabilities, but was transferred to another mainstream school for the second term of that school year and remained there until he completed his primary education in 2018/19.

47. According to the applicant, the mainstream school which he attended from the second term of 2014/15 onwards organised his schooling in a way corresponding to his special educational needs, which allowed him to adapt to the school environment and improve his educational and behavioural performance. The Government pointed out that according to the records about the applicant's primary education and the testimony of his teacher in that school before the Sofia City Administrative Court (see paragraph 62 below), for four terms in that school the applicant had followed an individual

education plan, without attending classes with other students, and for one term a combined plan, attending only sport and art lessons with other pupils and being taught other subjects on a one-to-one basis, in a separate room. According to the evidence of his teacher in that school, the applicant had a good intellect, could cope well with the educational material, and was receiving constant support from his parents, who had at first been distrustful towards the school but had later come around. He was not aggressive, but sometimes verbally provocative, especially to other boys, and usually addressed teachers in an unduly colloquial manner, despite his parents' admonishments, and found it difficult to work with some of them. There was a sort of cyclical nature to his behaviour. It was in her view difficult, but he was slowly improving. There had been an incident in which he had falsely accused a classmate of pushing him to the ground, and another incident in which he had tried to kick a teacher whom he had mistakenly accused of inappropriately touching him.

II. COMPLAINT TO THE OMBUDSMAN

48. On 21 February 2013 the applicant's parents complained about his treatment in the first school to the National Ombudsman. In his reply, dated 7 June 2013, the Ombudsman stated, without giving details, that his investigation had revealed that not enough effort had been made to socialise the applicant at the school, and that the school had not organised itself in a way to be able to accept his individuality and accommodate his needs, but on the contrary had contributed to him being in a bad physical and psychological situation.

III. ANTI-DISCRIMINATION PROCEEDINGS

49. In August 2013 the applicant's father complained on his behalf to the Commission for Protection from Discrimination ("the Commission" – see paragraph 84 below). He claimed that the applicant's teacher (named as first respondent) had directly discriminated against him and had harassed him, and that the head teacher of the applicant's school (named as second respondent) had failed to take sufficient steps to halt the discrimination against him by teachers and ensure the effective exercise of his right to education. The complaint also alleged that the teacher and the head teacher had failed to accommodate the applicant's special educational needs, that his teacher had harassed him and had encouraged his classmates to harass him, and that his English-language teacher had also harassed him.

A. First examination of the complaint by the Commission

50. The complaint was examined by a three-member panel of the Commission. It obtained submissions and evidence from the applicant, his teacher, the head teacher, and various authorities, and heard a number of witnesses.

51. In its decision, delivered in March 2015, the panel found that (a) the teacher had failed to integrate the applicant into the school environment and to assist his integration, thereby discriminating against him on grounds of both disability and personal status, and that (b) by giving the applicant a disciplinary sanction and then allowing the interruption of his schooling, the head teacher had discriminated against him on the same grounds (*реш. № 117 от 17.03.2015 г. по прет. № 286/2013 г., КЗД*).

52. One of the three members of the panel dissented. He criticised, *inter alia*, the majority's findings of fact. He went on to say that in his view the teacher had done all that she could to help him adapt to the school, and that the head teacher had not discriminated against him either.

B. Judicial review of the Commission's decision

53. The teacher and the head teacher sought judicial review of the Commission's decision.

54. In February 2016 the Sofia City Administrative Court found that the decision had been given by an improperly constituted panel and was hence a nullity, for two reasons. First, one of the members of the panel which had examined the complaint had then not taken part in the decision but had been replaced by another member of the Commission, whereas under the rules of procedure the panel hearing a complaint could not be modified. It was even unclear whether the original or the substitute member had been present at the panel's final hearing. Secondly, although the panel had at first proceeded on the basis that the applicant had allegedly been discriminated against on grounds of disability, it had in its decision found that he had been discriminated against also on grounds of personal status. Under the rules of procedure, however, complaints involving alleged discrimination on two or more grounds were to be examined by a five-member panel. The court remitted the case to the Commission (*реш. № 747 от 10.02.2016 г. по адм. д. № 3995/2015 г., АдмС-София-град*).

C. Re-examination of the complaint by the Commission

55. A five-member panel of the Commission re-examined the complaint. It obtained written submissions from the teacher, the head teacher, and various authorities. It also re-heard three witnesses already heard by the three-member panel (the school's pedagogical advisor, the resource teacher who

had worked with the applicant in 2012/13, and the school's deputy head teacher), and obtained further evidence. The applicant's father presented audio-recordings of exchanges between the applicant and his teacher that the applicant had made covertly and transcripts of those recordings made by him. The panel accepted them *de bene esse*, noting that they had been made unlawfully and could not be used as evidence.

56. In December 2017 the five-member panel found that the school had not discriminated against the applicant (*реш. № 447 от 21.12.2017 г. по прен. № 286/2013 г., КЗД*).

57. The panel began by noting that the pedagogical assessment carried out in March 2011 should have made it plain that the applicant would find it hard to adapt at school, but that his teacher and the pedagogical advisor had spotted his behavioural difficulties and had consulted with his parents from the beginning of the first school year. The applicant's behaviour had, however, been damaging and dangerous for both him and his classmates. The disciplinary sanction subsequently imposed on him had been resorted to only after sustained efforts to engage with his parents, in his own interest. The sanction had been imposed several months before he had been formally recognised as having special educational needs and had been rescinded immediately after that recognition. The head teacher had sought to assist the applicant's adaptation to school and encourage a change in his behaviour; she had also reacted immediately to the incident involving a slap by his English-language teacher.

58. After the applicant's parents had notified the school of his diagnosis, the school had taken all requisite steps to assist his adaptation to school and ensure his right to education, devising an individual education plan for him and providing a resource teacher, who had actually worked with him. His parents had, however, not properly supported those efforts. This, and the applicant's consistently challenging and aggressive behaviour had led to a conflict between his parents, the school and the parents of other pupils. His behaviour could not, however, be tolerated to the detriment of other pupils.

59. The covert audio-recording submitted by the applicant's father could not be used in evidence. It was inadmissible for a pupil's parents to resort to such tactics. Moreover, it could not be excluded that the applicant's parents had instructed him to provoke his teacher and then record her reaction.

60. The applicant's allegations of discrimination and harassment were not supported by the evidence. It was true that he fell into a particularly vulnerable category, but the school had tried to take special care of him with a view to levelling his educational opportunities. The laws prohibiting discrimination were not meant to place insurmountable obstacles in the way of the normal functioning of public institutions.

D. Judicial review of the Commission's second decision

61. The applicant sought judicial review of the Commission's decision. He argued that the Commission had assessed the evidence incorrectly and selectively, and that he had in reality been discriminated against.

62. The Sofia City Administrative Court obtained further evidence and heard one of the witnesses already heard by the Commission (the pedagogical advisor) and two further witnesses (the applicant's teacher at the school in which he had subsequently completed his primary education and a social worker who had dealt with the applicant's case).

63. In July 2019 the court dismissed the claim (*реш. № 5080 от 19.07.2019 г. по адм. д. № 1701/2018 г., АдмС-София-град*).

64. It noted that the applicant had had difficulties adapting at school from the outset, and that his teacher and the school's pedagogical adviser had met several times with his parents in relation to that. Despite those efforts, the applicant had not managed to obey the school's rules. He had displayed aggressiveness towards his classmates and had endangered both them and himself. After the meeting of the commission for the prevention of anti-social behaviour in March 2012, the school had directed his parents to seek specialised advice. The ensuing disciplinary sanction – the warning that the applicant would be transferred to another school – had been prompted by his behaviour and had not amounted to discrimination. On the contrary, a failure to take measures in the face of the applicant's behaviour would have amounted to undue preferential treatment.

65. The head teacher had duly reacted to all complaints of harassment of the applicant at school, as shown in particular by the reprimand which she had given to his English-language teacher.

66. The court went on to note that immediately after the applicant had been formally recognised as having special educational needs, the school had offered to switch him to education on an individual basis, and that when his parents had declined that offer, he had been provided, as requested and within the school's capacities, with a resource teacher. The mere offer of education on an individual basis could not be seen as discrimination, especially since there was evidence that the applicant had for some time followed an individual education plan at the school which he had attended after 2015. The lack of trust by his parents and their resistance to the measures suggested by the school had to a great extent contributed to his challenging behaviour.

67. Lastly, the head teacher's decision to allow the interruption of the applicant's schooling in early 2013 had not infringed his right to education, since it had been made on the basis of a medical recommendation and an express request by his parents.

E. Appeal to the Supreme Administrative Court

68. The applicant appealed to the Supreme Administrative Court. He argued that the lower court had incorrectly assessed the evidence, in particular the witness evidence obtained by it, and had based its judgment on erroneous findings of fact. According to him, the evidence clearly showed that the school had harassed him, based on its understanding that his behaviour resulted from poor parenting rather than from an impairment, and had discriminated against him.

69. On 14 January 2020 the Supreme Administrative Court dismissed the appeal. It held that the lower court had been correct to find that the applicant had not been discriminated against or harassed. The evidence showed that after the presentation of medical documents certifying his disability the school had taken steps to enable him to adapt to school and to ensure his right to education, and did not point to any discrimination against him. The school's offer of an individual education plan had been justified by the applicant's disruptive behaviour. The disciplinary sanction imposed on him could not be seen as discrimination or harassment either, since it had been rendered necessary by his behaviour. Nor had it been discriminatory to interrupt his education, since this had been done pursuant to a medical recommendation and at the request of his parents (*реш. № 581 от 14.01.2020 г. по адм. д. № 11451/2019 г., ВАС, V о.*).

RELEVANT LEGAL FRAMEWORK

I. NATIONAL EDUCATION ACT 1991

70. At the time of the events in this case, primary-school education in Bulgaria was governed by the National Education Act 1991 (the relevant part of which was superseded by the Pre-School and School Education Act 2015).

71. By section 27 of the 1991 Act, children with special educational needs had to be taught in an integrated manner in mainstream schools, which were under a duty to enrol them. Mainstream schools were all schools, including those with an emphasis on, or a profile in, arts, sports, music, languages, and so on, with the exception of special schools (section 26). Special schools could be set up to cater for pupils with, *inter alia*, special educational needs, who were to be sent there only if all other possibilities for education in mainstream schools had been exhausted, and it had been requested by their parents or guardians (section 27).

72. By section 7, education up to the age of 16 was compulsory. By regulation 6 of the Act's implementing regulations, education up to the age of 16 was to be on a daily basis.

73. By regulation 6(2), schools had to provide education on an individual or private basis to pupils certified medically as incapable of being educated on a daily basis in a mainstream school.

74. By regulation 6a, a complex pedagogical assessment team was to be set up every school year by the regional education inspectorate. The team comprised a number of school professionals, including an expert in integrated education, a psychologist, a speech therapist, a resource teacher, a doctor, and so on. It examined individual cases and could recommend integrated education or education in a special school; it could also direct children with chronic conditions to medical establishments corresponding to their needs. The team could determine that there be up to two children with special educational needs per class. It could also make recommendations to head teachers of schools providing integrated education on the number and qualifications of resource teachers. It provided methodological assistance, coordination and supervision to teams in schools providing integrated education. The child's parents and a representative of the child protection authority had to participate in the team's work.

75. By regulation 7, schools had to ensure a supportive environment for the integrated education of children with special educational needs.

76. By regulation 37, when pupils with special educational needs were taught in an integrated manner in schools, head teachers had to form a team, comprising the child's teacher, a psychologist, a resource teacher, a pedagogical advisor, a speech therapist and other teachers, to evaluate their educational needs, monitor their development and prepare individual education plans for them. The pupils' parents had to participate in the team's work.

II. PROTECTION FROM DISCRIMINATION ACT 2003

A. Discrimination

77. The Protection from Discrimination Act 2003 came into force on 1 January 2004. Its section 4(1) prohibits direct or indirect discrimination on grounds of, *inter alia*, personal status and disability.

78. By section 7(10), treating people with disabilities differently in connection with education or with the acquisition of a degree in order to address special educational needs with a view to levelling their opportunities does not amount to discrimination.

B. Harassment

79. By section 5, harassment on any of the grounds set out in section 4(1) is deemed to be a form of discrimination. Paragraph 1(1) of the Act's additional provisions defines "harassment" as any unwanted conduct based

on the grounds set out in section 4(1) – whether expressed through physical gestures, words or otherwise – which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

C. Discrimination in the field of education

80. Sections 29 to 35 make provision for protection from discrimination in the field of education.

81. By section 29(2), the head teacher of a school must take effective measures to prevent all kinds of discrimination by members of the teaching or other staff or by other pupils or students. By section 34, the head teacher is directly liable for discrimination if he or she fails to comply with that duty.

82. By section 31, a head teacher who receives a complaint from a pupil considering that he or she has been harassed by a member of the educational or other staff or by another pupil must investigate the matter immediately and take steps to end the harassment and impose a disciplinary sanction.

83. By section 32, educational institutions must take suitable measures to level the opportunities for an effective exercise of the right to education of people with disabilities, unless the costs of doing so would be unjustifiably high and place the institution in serious difficulty.

D. Commission for Protection from Discrimination

84. The authority chiefly responsible for ensuring compliance with the Act is the Commission for Protection from Discrimination (section 40(1) and (2)). It can act on its own initiative or pursuant to complaints by the aggrieved parties or reports by concerned persons or authorities (section 50). If the Commission finds that there has been a breach of the Act, it can order that it be averted or stopped, or that the status quo ante be restored (section 47(2)). The Commission can also impose sanctions, such as fines, order coercive measures, or give mandatory directions (section 47(3) and (4)). Its decisions are amenable to judicial review (section 68(1)).

85. People who have obtained a favourable decision by the Commission and wish to obtain compensation for damage suffered as a result of the breach established by it can bring a follow-on claim for compensation against the persons or authorities which have caused the damage (section 74(1)).

86. Alternatively, people complaining of discrimination can bring proceedings directly in a civil court seeking (a) a judicial declaration that there has been a breach of the Act, (b) an injunction requiring the person(s) engaging in discrimination to cease the breach, restore the status quo ante or refrain from such breaches in the future, or (c) damages (section 71(1)).

THE LAW

ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

87. The applicant complained that (a) the teachers and the head teacher of the primary school which he had attended in years one and two had harassed him and had treated him unprofessionally, and that (b) they had failed to organise his education in a manner corresponding to his special educational needs. In his application, he relied on Article 14 of the Convention taken in conjunction with certain provisions of the 1989 United Nations Convention on the Rights of the Child (1577 UNTS 3), including its Article 28 § 1, which concerns the right to education.

A. Legal characterisation of the complaint

1. The parties' submissions

88. For the Government, both limbs of the complaint, as formulated by the applicant, fell to be examined under Article 14 of the Convention taken in conjunction with Article 8, since his discrimination claims related to his right to respect for his dignity, integrity and well-being. It was harder to see the complaint as one concerning discrimination in the exercise of the right to education under Article 2 of Protocol No. 1.

89. The applicant replied that the matters of which he complained engaged both Article 8 of the Convention and Article 2 of Protocol No. 1.

2. The Court's assessment

90. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and its Protocols, and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). In this case, it considers that the applicant's complaints, though capable of being seen from different vantage points, fall most logically to be examined under Article 14 of the Convention. That provision complements the other substantive provisions of the Convention and its Protocols; it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions (see, among other authorities, *Van der Mussele v. Belgium*, 23 November 1983, § 43, Series A no. 70; *Petrovic v. Austria*, 27 March 1998, § 22, *Reports of Judgments and Decisions* 1998-II; and *Ponomaryovi v. Bulgaria*, no. 5335/05, § 48, ECHR 2011). It cannot hence be relied on in conjunction with the provisions of other international instruments, such as the Convention

on the Rights of the Child. In this case, however, the right with respect to the exercise of which the applicant alleged to have been discriminated against – the right to education – is also protected under Article 2 of Protocol No. 1. Moreover, the alleged breach of Article 14 of the Convention took place at the school which the applicant attended in years one and two, and his complaint concerns the way in which he was treated there with respect to his education and school discipline. The complaint thus falls most naturally to be examined under Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *G.L. v. Italy*, no. 59751/15, § 34, 10 September 2020). It should be noted, in particular, that a school's disciplinary system falls within the ambit of the right to education (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 27, Series A no. 247-C).

91. It is true that measures in the field of education may also affect the right to "respect for ... private ... life" (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, p. 33, § 7, Series A no. 6). In this case, however, all issues potentially arising under Article 14 of the Convention taken in conjunction with Article 8 are subsumed under those arising under Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1. The latter must in any event be interpreted in the light of Article 8 of the Convention (see *G.L. v. Italy*, cited above, § 50 *in fine*). Any issues relating to alleged discrimination in relation to the applicant's right to "respect for his private ... life" do not, then, require separate examination (see, *mutatis mutandis*, *G.L. v. Italy*, cited above, § 76).

92. The relevant parts of Article 14 of the Convention and Article 2 of Protocol No. 1 read:

Article 14 (prohibition of discrimination)

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 1 (right to education)

> "No person shall be denied the right to education. ..."

B. Admissibility

1. Exhaustion of domestic remedies

93. The Government submitted that to the extent that the applicant's complaint concerned alleged discrimination by persons other than his teacher and his school's head teacher, he had not exhausted domestic remedies, since

only those two people had been respondents in the domestic anti-discrimination proceedings brought on his behalf.

94. The applicant submitted that he had had recourse to the usual remedy in respect of discrimination.

95. The Court notes that a complaint to the Commission for Protection from Discrimination is one of the two normal avenues of redress with respect to discrimination and discriminatory harassment in Bulgaria (see *Aydarov and Others v. Bulgaria* (dec.), no. 33586/15, § 83, 2 October 2018; *Fartunova and Kolenichev v. Bulgaria* (dec.), no. 39017/12, § 55, 16 June 2020; *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, § 73, 16 February 2021; and *Behar and Gutman v. Bulgaria*, no. 29335/13, § 78, 16 February 2021). Such proceedings were brought on behalf of the applicant, who was at the relevant time still a minor, but his father directed the complaint solely against the head teacher of the applicant's school and his teacher (see paragraph 49 above). It is true that the proceedings before the Commission and the ensuing proceedings for judicial review of its decision touched upon all matters which the applicant then raised in his application to the Court (see paragraphs 49, 51-52, 56-60, 63-67, 69 and 87 above). It nonetheless remains the case that those proceedings could not have resulted in any redress with respect to other persons alleged to have discriminated against the applicant, for instance his English-language teacher. The applicant did not therefore give the Bulgarian authorities a proper opportunity to remedy that part of his grievance under Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1, as required by the exhaustion rule in Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Horváth and Kiss v. Hungary*, no. 11146/11, § 87, 29 January 2013).

96. The Government's objection must therefore be upheld.

2. Conclusion on the admissibility of the complaint

97. For the Government, the complaint was manifestly ill-founded.

98. The applicant reiterated that his right not to be discriminated against had been infringed.

99. The Court finds that the part of the complaint with respect to which the applicant did exhaust domestic remedies – that concerning alleged discrimination by his school's head teacher and his teacher – raises sufficiently complex issues of fact and law to require an examination on the merits. This part of the complaint is, moreover, not inadmissible on other grounds. It is, in particular, not incompatible *ratione personae* with the provisions of the Convention by reason of the fact that the alleged breach was committed by staff members of a school (see, *mutatis mutandis*, *Costello-Roberts*, cited above, §§ 25-28). It must therefore be declared admissible.

100. By contrast, the part of the complaint which concerns alleged discrimination by persons other than the school's head teacher and the applicant's teacher must be declared inadmissible under Article 35 §§ 1 and 4

of the Convention for non-exhaustion of domestic remedies (see paragraph 95 above).

C. Merits

1. The parties' submissions

(a) The applicant

101. The applicant submitted that he had been discriminated against. In his view, he should have been treated as a pupil with special educational needs from the outset, and in the light of its findings about him the school should have advised his parents to arrange for an appropriate medical examination. The sanction imposed on him had not taken into account that he had merely been protecting himself from aggression by teachers and classmates, and that he had a disability. It was true that his special educational needs did not absolve him from behaving properly, but that could have been tackled with special arrangements with respect to his impairment, excluding contact capable of harming his dignity, and ensuring his gradual socialisation in a favourable educational environment. His teacher and the head teacher had treated him in the same way as pupils without a disability, assuming that his behavioural problems had been due to a lack of proper parenting, and had even attempted to force his parents to transfer him to another school. The school had thus failed reasonably to accommodate his special educational needs.

(b) The Government

102. For the Government, the applicant had not been discriminated against. The troubled relations between his parents and his school had not deprived him of education, especially since after his transfer to another school he had been able to continue his studies. His harassment allegations were not supported by the evidence and had been dismissed by the inspections carried out in relation to his case and in the anti-discrimination proceedings brought on his behalf. It was clear that he had systematically failed to abide by school rules, had disrupted the teaching process, and had been aggressive to other pupils and teachers. The disciplinary sanction imposed on him had thus not been discriminatory. His special educational needs could not absolve him of the duty to follow proper rules of behaviour; his failure to do so had negatively affected his classmates and teachers, and the sanction against him had sought to protect their rights. He could not claim that the behaviour resulting from his disorders had to be tolerated to the detriment of his classmates. When imposing the sanction, the school had had regard to his interest not to be excluded from school and the risk that his transfer to another school could exacerbate his behavioural problems. Moreover, when he had

been diagnosed and had had his special educational needs formally recognised, the head teacher had on her own initiative rescinded the sanction.

103. The Government further submitted that the authorities had taken reasonable steps to alleviate any disparities between the applicant and pupils without special educational needs. The school had advised his parents of expected adaptation problems from the outset of his first year of schooling. It had then approached his parents, recommended appropriate consultations, participated in discussions about his case, and proposed that he be schooled on a one-to-one basis. After his parents had declined that proposal, the school had set up a special team to work with the applicant. The steps taken to accommodate his educational needs had been reviewed in detail and found sufficient by the education inspectorate and the child-protection authorities, as well as in the anti-discrimination proceedings brought on his behalf.

2. The Court's assessment

(a) General principles

104. The general principles governing the application of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the education of people with disabilities were set out in detail in *Çam v. Turkey* (no. 51500/08, §§ 52-54 and 64-67, 23 February 2016), *Sanlisoy v. Turkey* ((dec.), no. 77023/12, §§ 58-61, 8 November 2016), *Enver Şahin v. Turkey* (no. 23065/12, §§ 52-55 and 60-61, 30 January 2018) and *G.L. v. Italy* (cited above, §§ 49-54, 57 and 62-63). In that context the Court considers it sufficient to emphasise that:

(a) Article 14 of the Convention prohibits discrimination on grounds of disability, which falls under the rubric "other status";

(b) Such discrimination can consist not only in less favourable treatment on grounds of a disability without a reasonable and objective justification but also in a failure to provide "reasonable accommodation" for someone with a disability;

(c) The notion of "reasonable accommodation" in this context must be understood in the sense ascribed to it by Article 2 of the 2006 United Nations Convention on the Rights of Persons with Disabilities (2515 UNTS 3)[1], in whose light Article 14 of the Convention must be read when being applied in this domain: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms";

1. Bulgaria signed the 2006 United Nations Convention on the Rights of Persons with Disabilities on 27 September 2007 and ratified it on 22 March 2012, with the result that, as provided in its Article 45 § 2, that Convention came into effect with respect to Bulgaria on 21 April 2012. Its translation into Bulgarian was published in the Bulgarian State Gazette on 15 May 2012 (*ДВ, бр. 37 от 15.05.2012 г.*).

(d) "Reasonable accommodation" in the field of education can take different material or non-material forms – for instance, teacher training, curricular adaptation or appropriate facilities, depending in particular on the disability in question – and it is not for the Court to define its modalities in a given case, the national authorities being much better placed to do so, it being emphasised however that those authorities must take great care with the choices that they make in this respect.

105. In this case, it must also be underlined that a disability may consist in, or result from, not only a physical but also a mental or behavioural impairment.

(b) Application of those principles

(i) Scope of the complaint and the Court's approach to its examination

106. Both limbs of the applicant's complaint, as formulated by him in the relevant part of the application, are fairly general and relate to a significant period of time – his first two years of primary schooling (see paragraph 87 above). However, the statement of facts in his application, drawn up on his behalf by a lawyer, referred only to certain incidents and situations which took place during that period. The Court would be exceeding its jurisdiction if it were to use as a basis facts not covered by the applicant's complaint; it is limited by the facts presented by him or her (see *Radomilja and Others*, cited above, §§ 123 and 126; *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 145, 5 April 2022; and *Savickis and Others v. Latvia* [GC], no. 49270/11, § 95, 9 June 2022). It will therefore confine its examination to the incidents and situations referred to by the applicant, while naturally attempting to elucidate them in so far as possible on the basis of the evidence and submissions adduced by the parties and the findings made in the domestic proceedings relating to them, and to place them in their proper context, as it emerges from all the available material.

107. It must also be emphasised in this connection that the applicant's complaint was examined first by the national authority specifically tasked with dealing with discrimination grievances, the Commission for Protection from Discrimination, and then by the national administrative courts. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law in a manner that gives full effect to the Convention (see, as a recent authority, *Halet v. Luxembourg* [GC], no. 21884/18, § 159, 14 February 2023). In the usual course of events, the Court would hence base its analysis of the complaint on the findings of fact of that authority and those courts (see, *mutatis mutandis*, *Arnar Helgi Lárusson v. Iceland*, no. 23077/19, § 30, 31 May 2022), even though it remains the ultimate arbiter of whether there has been a breach of Article 14 of the Convention. In this case, however, the Court cannot rely exclusively on those findings, since the somewhat broad-brush manner in which parts of the domestic decisions – especially

those of the Commission for Protection from Discrimination – were drawn up makes it difficult to ascertain all relevant details solely on their basis. Thus, although the findings set out in those decisions remain the chief foundation on which the Court's analysis rests, the Court has sought to elucidate various points which had remained to some extent unclear on the basis of the primary materials in the case.

(ii) Do the facts to which the applicant referred disclose a breach of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1?

108. Since the first limb of the applicant's complaint (see paragraph 87 (a) above) appears to concern alleged direct discrimination on grounds of his disability, and the second limb concerns an alleged failure to provide "reasonable accommodation" of his needs in respect of that disability (see paragraph 87 (b) above), it is more convenient to analyse the two points separately, even though in practice they largely overlap.

(α) Was the applicant unjustifiably treated less favourably than others on grounds of disability?

109. The nature of a "direct discrimination" breach alleged under Article 14 of the Convention normally requires that a complaint in this respect indicate (a) the person or group of persons in comparison with whom the applicant contends to have been treated differently ("the comparator"), and (b) the ground of the alleged distinction (see *Fábián v. Hungary* [GC], no. 78117/13, § 96, 5 September 2017). In this case, the alleged ground of distinction was the disability resulting from the applicant's hyperkinetic and scholastic-skills disorders. In the light of the parties' observations (see paragraphs 101 and 103 above) it can further be accepted that the comparator was pupils in the applicant's school who had no impairments causing them behavioural difficulties. The Court is also willing to proceed on the basis that the applicant was in a relevantly similar situation with such pupils and that he was indeed treated differently from them in analogous respects. The focus of the inquiry must therefore be on whether the way in which the applicant was treated by the head teacher and his teacher in the various situations to which he referred had an objective and reasonable justification.

110. It is plain that the applicant's behaviour in school and the resulting incidents, in particular with classmates, elicited a number of reactions from his teacher and the head teacher. The question is whether on each of those occasions those reactions had or did not have an objective and reasonable justification. It should be noted in this connection that although there were some indications that the applicant had behavioural problems and would hence encounter difficulties at school even before he started attending it, his teacher and the head teacher were only apprised of the precise nature of his disorders in October 2012, when he was starting year two (see paragraphs 5 and 24 above).

111. To take matters chronologically, the first incident of which the applicant was aggrieved was the meeting of the school's commission for the prevention of anti-social behaviour in March 2012, convened at the initiative of his teacher and the head teacher (see paragraph 10 above). That meeting, however, did not result in any concrete actions with respect to him. It was rather an attempt by the head teacher and the applicant's teacher to bring their concerns about the applicant's behaviour to the attention of his parents and seek a way to tackle that behaviour with their assistance. It cannot therefore be said that the holding of the meeting to discuss the applicant's situation was unjustified or unreasonable.

112. The manner in which the head teacher reacted to the violent incidents between the applicant and other pupils in March 2012 and the complaints by the applicant's mother about those incidents cannot be described as unreasonable either. The head teacher investigated the incidents, and apparently came to the view that they did not require an immediate response (see paragraphs 12-15 above). The further violent incidents in October 2012 (see paragraphs 32-34 above) were also promptly investigated on her behalf by her deputy (see paragraph 35 above).

113. The disciplinary sanction which the head teacher imposed on the applicant in May 2012 was prompted by a considerable number of instances of him misbehaving in class and in particular displays of aggression by him towards other pupils and teachers. The sanction was apparently preceded by sustained informal efforts to tackle the applicant's behaviour. It was also relatively mild, consisting of a mere warning that he would be transferred to another school, and was deferred until the beginning of the following school year (see paragraphs 19-21 above). Moreover, as soon as the head teacher was advised at the beginning of the following school year that the applicant had been diagnosed as having hyperkinetic and scholastic-skills disorders, she rescinded the sanction (see paragraph 31 above), with the result that it produced no tangible effects for the applicant. The sanction cannot therefore be seen as a disproportionate or unjustified reaction to his behaviour, or as an automatic and inflexible enforcement of the school's disciplinary rules and policies without any consideration for the possibility that the applicant's disruptive behaviour might have been a product of his impairment rather than a conscious choice on his part.

114. As for the applicant's allegation that his teacher systematically harassed and mistreated him on account of his disability and the behaviour flowing from it (see paragraphs 22 and 32 above), it should be noted that the applicant's accounts on such matters were disputed (see paragraphs 35 *in fine* and 47 *in fine* above). More importantly, those allegations were dismissed in the domestic anti-discrimination proceedings brought on his behalf (see paragraph 60 above). It is not for the Court, which, unlike the Bulgarian Commission for Protection from Discrimination and the Bulgarian courts which reviewed that Commission's decision, has not heard live evidence

from the people concerned or other witnesses, to gainsay that finding. It can be accepted that the applicant's teacher on many occasions reprimanded him in connection with his behaviour and removed him from class to prevent him disrupting the teaching process (see, for instance, paragraph 41 above). But in the light of the material in the case file and the findings made in the domestic proceedings, the Court is not persuaded that in any of those instances she did so unjustifiably or in a disproportionate manner, let alone that, as alleged by the applicant, she targeted or harassed him owing to his disability or the behaviour flowing from it.

115. The way in which the head teacher reacted to the incident in which the applicant was slapped by his English-language teacher in November 2012 (see paragraph 37 above) cannot be seen as unreasonable either. It is true that the Court has had occasion to note, albeit in different contexts, that a slap on the face administered by a person in authority having control of another – even if an impulsive act carried out in response to an attitude perceived as disrespectful – is unjustified, undermines human dignity and runs counter to Article 3 of the Convention, especially if directed against a minor (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 102-11, ECHR 2015, and *A.P. v. Slovakia*, no. 10465/17, §§ 55-63, 28 January 2020). It is also true that under Article 8 of the Convention the national authorities must take steps to ensure zero tolerance to any violence or abuse in educational institutions (see *F.O. v. Croatia*, no. 29555/13, § 91, 22 April 2021). It cannot, however, be overlooked that when the applicant's parents complained to the head teacher about the slap, she promptly investigated the matter and gave the English-language teacher a disciplinary sanction. In the absence of more details about the circumstances in which the incident occurred and the head teacher's reasons for opting for a reprimand rather than harsher measures, the Court is not in a position to say that this sanction was unduly lenient and thus indicative of discrimination. It should also be noted in this connection that there is no evidence that the applicant or his parents sought further redress in respect of the slap from the teacher in question or from the school.

116. Lastly, it cannot be said that the head teacher's decision to allow the applicant to interrupt his schooling in February 2013 was an unjustified and unreasonable step. As noted by the Bulgarian courts, she agreed to do so because she was presented with a medical recommendation obtained by the applicant's parents and because they made an express request in that respect (see paragraphs 43-44, 67 and 69 *in fine* above). Moreover, the applicant was then able to repeat year two in another school (see paragraph 46 above, and compare *Sanlisoy*, cited above, § 68).

117. In sum, the available evidence does not permit a conclusion that on the occasions to which the applicant referred his teacher or the head teacher of his school had no objective and reasonable justification for acting as they did.

(β) Was "reasonable accommodation" made for the applicant?

118. Although the head teacher and the applicant's teacher were only apprised of the precise nature of the applicant's disorders in October 2012, when he was starting year two (see paragraph 24 above), they were aware that he had behavioural problems and would hence encounter difficulties at school even before he started attending it (see paragraph 5 above). But, as noted by the Commission for Protection from Discrimination and the Sofia City Administrative Court (see paragraphs 57 and 64 above), they already at that stage took steps to handle those problems and to enable the applicant and his parents to manage his behaviour and for him to obtain an effective education. The head teacher tried to meet with the applicant's father to discuss the matter about two months before the beginning of the school year (see paragraph 6 above). For her part, the teacher enlisted the help of the school's pedagogical advisor almost immediately after the beginning of the school year, and during the first term the two of them met with the applicant's parents several times to discuss his behaviour and possible solutions (see paragraphs 7-9 above). It seems that at that stage the precise nature of the applicant's disorders and the specific steps to be taken to accommodate them were not fully apparent, either to the school or his parents; that only became clear when the psychologists from the foundation providing psychological counselling to the applicant and his parents referred him for assessment to a child psychiatry clinic at the beginning of his second year (see paragraph 23 above).

119. In the face of accumulating difficulties with the applicant's behaviour, during the second term of his first year the head teacher and his teacher resorted to more formal steps, such as convening meetings of the school's commission for the prevention of anti-social behaviour and of the school's pedagogical council. It does not, however, appear that in those meetings they acted in an intransigent manner. On the contrary, the available evidence suggests that the purpose of the meetings, and of the disciplinary sanction imposed on the applicant after the second meeting, was not so much to punish him but to direct his behaviour in a positive direction, with the help of his parents. Moreover, the sanction was, as already noted, relatively mild and deferred until the beginning of the following school year. It was, in any event, rescinded as soon as the head teacher was advised that the applicant had been formally diagnosed (see paragraph 31 above), and thus, as noted above, it had no tangible effects on the applicant.

120. Within a month after the head teacher had been notified of the applicant's diagnosis and of the certification of his special educational needs, she took steps to accommodate them. She proposed to his mother a draft individual education plan, put together a team to devise such a plan for him, and ensured that he would have individual lessons with a resource teacher (see paragraphs 24 and 27-29 above). Although she expressed the view that the applicant should be taught on a one-on-one basis and should only interact with his classmates during breaks, she did not insist on that solution, which

was rejected by the applicant's parents. It is also true that she refused their request for the applicant to be moved to another class, but she did so on the basis that the school had a policy of having only one child with special educational needs per class and because she had obtained advice that the applicant's challenging behaviour would remain constant in the school environment, irrespective of the personalities of his teacher and his classmates (see paragraphs 25 and 30 above). These delicate and highly context-specific assessments can be seen as falling within the school authorities' margin of appreciation. It should in any event be noted that, as pointed out by the Sofia City Administrative Court (see paragraph 66 above), at the school which the applicant attended subsequently – and with which he expressed full satisfaction – he did follow an individual education plan for some time, and a combined plan for one term, attending only sport and art lessons with other pupils and being taught other subjects on a one-to-one basis (see paragraph 47 above).

121. The steps taken by the head teacher did not unfortunately resolve the behavioural problems exhibited by the applicant, and his parents, having obtained medical advice, decided to interrupt his schooling in the second term of his second year. It cannot, however, be overlooked that, as pointed out by the Sofia City Administrative Court (see paragraph 66 *in fine* above), those difficulties were to some extent caused by the applicant's parents, who, by resisting the measures proposed by the school and by insisting that all the problems stemmed exclusively from the attitude of the head teacher, the applicant's teacher, the school staff in general and other pupils, jeopardised the relationship between the parties concerned (compare, *mutatis mutandis*, the circumstances in *Stoian v. Romania* [Committee], no. 289/14, §§ 107-08, 25 June 2019).

122. In sum, it cannot be said that the head teacher and the applicant's teacher turned a blind eye to his disability and his resulting special needs; it appears that they made a series of reasonable adjustments for him. It should be appreciated in this connection that the nature of the applicant's impairments was such that it caused him to behave in a manner which had an immediate negative impact on the safety and well-being of other pupils and on the possibility of providing effective education to them, and that in devising adjustments to those impairments the applicant's teacher and the head teacher were engaged in a difficult balancing act between his interests and those of his classmates. Article 14 of the Convention requires reasonable accommodation, rather than all possible adjustments which could be made to alleviate the disparities resulting from someone's disability regardless of their costs or the practicalities involved (compare, *mutatis mutandis*, *Arnar Helgi Lárusson*, cited above, §§ 63-64).

(γ) Conclusion

123. The above reasons lead to the conclusion that on the facts of this case there has been no breach of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the part of the applicant's complaint under Article 14 of the Convention concerning the direct discrimination to which he was allegedly subjected by the head teacher of the school which he attended in years one and two and his teacher there and their alleged failure to organise his education in a way corresponding to his special educational needs, and the remainder of the complaint inadmissible;

2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1.

Done in English, and notified in writing on 11 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President