

REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2007

BULGARIA

State of affairs up to 29 February 2008

This report has been drafted for the **European Network of Legal Experts in the Nondiscrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

Bulgaria is a unitary state where the Constitution and ratified international instruments are directly enforceable by the general courts, and the legal system is continental, with no *stare decisis*. The Constitutional Court has exclusive authority to bindingly interpret the Constitution, as well to rule on: acts of Parliament's alleged unconstitutionality; international treaties' compatibility with the Constitution prior to their ratification; primary legislation's compatibility with the Constitution and international law, including *jus cogens*; political parties' constitutionality; and presidential elections' legality. Only a limited number of public institutions have standing to initiate proceedings with the Court. There is no right to individual petition. Legislation may be divided in categories of primary and secondary legislation, the former being Parliament-adopted, and the latter, executive-adopted. The general courts have no authority to set aside primary legislation but they are bound by a duty to apply higher-ranking constitutional and international norms instead whenever contradicted by a statute. The Protection Against Discrimination Act 2004 is the main anti-discrimination legislation, which transposes the EC equality directives. It is a single equality law universally banning discrimination on a range of grounds, and providing uniform standards of protection and remedies. In parallel, other, pre-existing abstract prohibitions of discrimination are still in place under other laws governing specific fields, as well as the Constitution. There is no coherence between the Protection Against Discrimination Act and other, older, legislative bans on discrimination, with differences in protected grounds, exceptions, and definitions. Further, there is inconsistency between the Protection Against Discrimination Act and other laws governing particular fields that provide for directly or indirectly discriminatory norms, contradicting the Protection Against Discrimination Act's universal ban. Very limited and insufficient effort has been made to harmonise the legislation so as to ensure that the Protection Against Discrimination Act prevails over other conflicting norms. Apart from the Protection Against Discrimination Act, the other significant law on equality is the Integration of Persons with Disabilities Act, which bans disability discrimination specifically and provides for positive and accommodation duties with respect to persons with disabilities in a number of key fields. Further, a number of laws governing specific fields, such as education, employment, public procurement, and taxation, provide for positive measures on grounds, such as disability, age, and caring responsibilities. Most of these laws, too, predate the Protection Against Discrimination Act and are not consistent with it. There is further information on how the legal system deals with conflicting sources of law in para 8.2 of this report.



0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

- The Protection Against Discrimination Act defines indirect discrimination in a way that makes judges conflate it with covert direct discrimination. The language of the definition is misleading because it refers to “on grounds of”, which contradicts the “apparently neutral” part of the wording. While the intention of the lawmakers was to refer to the protected grounds as characteristics defining the group that is put at a particular disadvantage, the result is that a number of court and equality body decisions have read the phrase “on grounds of” as defining a causal link between the apparently neutral rule and the particular protected ground/s. Such reading is apparently based on the assumption that “an apparently neutral” act is one that, albeit based on the particular ground, is not openly motivated by it; therefore, they take the provision for indirect discrimination to refer to covert direct discrimination. As a whole, equality body members and judges, including Supreme Administrative Court judges, who are charged with judicial review of the equality body’s decisions, simply do not understand the concept of indirect discrimination. They have applied this concept to a number of cases of clear cut direct less favourable treatment.
- The Protection Against Discrimination Act, art. 7 (1.8), makes a general exception for different treatment based on age in the pensions context with no objective justification test. While this may not be an issue under Community law in view of Recital 14 of the Preamble to the Framework Directive, it is inconsistent with the approach of the Protection Against Discrimination Act itself which requires proportionality for exceptions as a rule. A provision allowing disproportionate differences of treatment on a protected ground such as age could not be seen as propitious.
- The Protection Against Discrimination Act, § 1.3 Additional Provision, defines victimisation as “less favourable treatment” rather than adverse treatment simply, introducing thereby an undue requirement for a comparator.
- Other laws pre-dating the Protection Against Discrimination Act contradict it by providing for restrictions based on protected grounds without any justification test.

The state has not deferred implementation of Directive 2000/78 in relation to age and disability.

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

- a) Name of the court
- b) Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c) Name of the parties
- d) Brief summary of the key points of law (no more than several sentences)



Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the 2 Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

- Supreme Court of Cassation
28 November 2007; ref. N 1302/07
Mehmet Assan Denev v. "EVN Bulgaria Power Distribution" AD
The court confirmed a ruling whereby the Plovdiv Regional Court had found the local power supplying company liable for direct discrimination against a family of Romani consumers for having imposed on them arbitrary irregular power cuts for the course of 3 years, although they had had no outstanding debts. The Supreme Court raised the amount of compensation awarded for non-pecuniary damages to a total of the equivalent of EURO 2500.
- Supreme Court of Cassation
27.11.2007
Optima Group OOD v. Krassimir Anguelov
The Court upheld a ruling by the Pazardzhik appeals court, which had found a private company liable for a denial of access to its facilities to Roma customers. Company employees had barred Roma youth from entering a public swimming pool. Claimant was awarded the equivalent of EURO 150 in compensation for non-pecuniary damages.
- Supreme Administrative Court
12.06.2007
Dimitar Parapanov v. Protection Against Discrimination Commission
The Court upheld a ruling by the equality body which had struck down a provision in the bylaws of the National Association of the Blind Deaf in Bulgaria whereby members without impairments or with limited impairments were excluded from participation in the association's governing bodies.
- Sofia District Court
18.05.2007
Equality National Association and Bulgarian Lawyers for Human Rights v. Minister of Education
The Court ruled that the Minister of Education had committed two distinct acts of direct discrimination against children with disabilities in general by failing to: create an environment for their integrated education in mainstream schools and kindergartens; and act to secure the funding for this. The court ordered the minister to take the requisite action, as well as to abstain from any further such omissions. The court held that the state would have carried out its legal obligation towards children with disabilities only when it had secured supportive environment in each school and kindergarten in the country.



- Pazardzhik District Court
19.03.2007; ref. N 473/07
Ventsislav Tsvetanov Ivanov and Ors v. “Optima Group” OOD
The court found a private company liable for direct discrimination against a group of people with intellectual disabilities because of its employees’ refusal to allow the latter access to a publicly available swimming pool. The court awarded each of the complainants the equivalent of EURO 250 as compensation for their non-pecuniary damages.
- Sofia City Court
12.06.2007
Ivelin Iliev v. Prosecutor’s Office of Bulgaria
The court confirmed on appeal a ruling by the trial court, which had found the Prosecutor’s Office liable for race discrimination against a Romani man because of anti-Romani written statements by an individual prosecutor. The prosecutor had made those statements in his reasons for terminating the investigation into the accidental death of the Romani man’s brother. Directly applying the International Convention on the Elimination of All Forms of Race Discrimination, the court found that the statements *per se* constituted discrimination regardless of whether the termination was justified but for the prosecutor’s racial bias. The court awarded the equivalent of EURO 250 in compensation for the complainant’s non-pecuniary damages.
- Sofia Regional Court
24.10.2007
Nikodim Vesselinov Yanushev v. “DZI Bank” AD
The court confirmed on appeal a ruling by the trial court, which had refused to find discrimination in a case of an explicit age bar to access to bank credit for men over 65 years of age provided for under the General Terms and Conditions of a bank. The court held that such a preliminary general restriction was not in breach of the particular claimant’s anti-discrimination rights as long as he had not personally sought a loan despite it, and been refused one.
- Sofia District Court
10.01.2007
Milcho Assenov Sandov v. “Power Distribution – Capital” AD
The court found the power supplier company had committed discrimination by mounting a Romani consumer’s electric meter at an inaccessible height and so barring his direct visual control over the device’s indications. The court provided redress in the form of a declaration that the complainant did not owe the company any of the disproportionate amounts for power consumption calculated under this unlawful arrangement.
- Sofia District Court
22.02.2007
Yordan Kostadinov v. Volen Siderov



The court refused to find that radical anti-minority public hate speech by a party leader and MP constituted harassment and incitement to discrimination on formal grounds. It held that it was not established that the complainant, an ethnic Macedonian man, had had his rights infringed as respondent had not specifically mentioned the Macedonian minority in his statements against minorities in general. It was not proven that claimant's dignity was impaired in particular, as it was not established that respondent had aimed to impair his particular dignity. No proof was adduced either of respondent's intent to incite to discrimination against minorities, therefore, there was no incitement. It was further not proven that respondent was in a position to influence his audience.

- Sofia District Court
12.07.2007

Sounay Chalukov v. Volen Siderov

The court refused to find that radical anti-minority public hate speech by a party leader and MP constituted harassment and incitement to discrimination on formal grounds. It held that it was not established that the complainant, an ethnic Turkish man, had had his dignity specifically impaired, as the statements were not directed against him personally. The court further reasoned the specific addressees of the statements were not established and, therefore, those statements could not constitute incitement to discrimination. Another reason for the court not to find incitement was that it was not proven that the respondent was in a position to influence his audience.

- Sofia District Court
7.06.2007

Ivan Alexandrov v. Volen Siderov

Again, a case where the court failed to find that political hate speech against ethnic minorities in general constituted discrimination. The reasons were similar to those in the two other cases v. Volen Siderov above. An additional reason in this case was that it was not proven that claimant was indeed of Vlachian minority origin.¹

- Sofia Administrative Court
06.08.2007

Gueorgui Khadzhhinedelchev v. Dean of Medical University Sofia

The court struck down a refusal by the university to admit a man aged over 35 years to participate in a competition for the position of assistant professor. The university's refusal was based on an explicit age limit provided for under the Scientific Degrees and Scientific Titles Act. The court held that limit was in breach of the Constitution and, therefore, should be set aside. The Supreme Administrative Court, however, repealed this ruling, declaring that a refusal such as the impugned one was not subject to court control, and, therefore, the proceedings were inadmissible.²

¹ *Vlachians* are an ethnic minority consisting of two sub-groups: *rumuni* (romanians) who speak Romanian, and *armuni* (aromanians), whose language, while close to the Romanian language, they consider to be a separate one.

² The Supreme Administrative Court's refusal to disapply the statutory age bar in favour of the Framework Directive as the higher-ranking source of law (the Constitution does not prohibit age discrimination) could be considered a breach of EC law. As judges are generally quite reluctant to disapply clear statutory rules for the sake of broader constitutional and international norms, especially still unfamiliar EC norms, the expected prevalence of this type of breach is quite high.



- Sofia City Court
22.02.2007
Paraskev Gueorguiev Arsenov v. Ministry of Healthcare
The court found on appeal that the ministry was liable for excluding by regulations affective disorder sufferers from access to public funding for treatment by private psychiatrists. The court held that exclusion constituted discrimination considering the fact that epilepsy sufferers, by contrast, were entitled under the regulations to such funding. It awarded claimant non-pecuniary damages in the amount of the equivalent of EURO 1250.
- Sofia District Court
31.05.2007
Gyura Borissova v. Prosecutor's Office of Bulgaria
The court failed to find discrimination in a case brought by a prisoner against a prosecutor's official refusal to file a court motion for her early release explicitly based in writing on her homosexual orientation. The court unreasonably held that the claimant's homosexual orientation was not the cause of the prosecutor's refusal, even though it found that it was included in the reasons of the prosecutorial decree, and that the claimant satisfied the legal test for early release.
- Plovdiv Appellate Court
21.02.2007
Rossitza Pavlova Belcheva v. City of Plovdiv
The court held that the architectural environment in the city of Plovdiv hampers claimant, a disabled woman, placing her at a disadvantage, which constituted indirect discrimination. However, the court failed to hold the municipal government liable for this because it had taken some action aimed at securing free and equal access to public places for persons with disabilities, and achieving that result was a lengthy and costly process. In addition, it was not established that the municipal government had intentionally failed to act with an aim to impair claimant's individual rights.

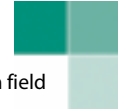
Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Cases brought on behalf of Roma, or in the Roma collective interest by NGOs, fall typically into several key categories: 1) explicitly or implicitly racially-motivated refusals of access to public services, including swimming pools, restaurants, cafeterias, bars, discotheques, hotels and shops; 2) less favourable treatment in the provision of power supply, including arbitrary power cuts and mounting of electric meters at inaccessible heights preventing consumers' control; 3) explicitly or implicitly racially-motivated denials of access to employment, and dismissals; 4) hate speech by public officials (including an MP, a local mayor and a prosecutor), constituting harassment and incitement to discrimination; 5) arbitrary forced evictions rendering entire communities homeless and vulnerable; 6) school segregation and substandard education; 7) police killings and inhuman treatment.



No comprehensive official figures are available. According to unofficial estimates, there should be between 50 and 70 cases altogether brought in defense of Roma equality rights before both the specialised body and the courts since the entry into force of the Protection Against Discrimination Act in 2004.³

³ Roma cases have the largest share compared to other grounds in lawsuits before the courts. Before the equality body, however, the ratio is different, with Roma cases having a smaller share than disability cases, for instance, and a much smaller share than cases on equality body-devised grounds, such as “in the exercise of labour rights” or “trade union affiliation”. A reason for the proportion of Roma cases being smaller before the equality body is that the overall number of cases brought before it is significantly greater than that of judicial lawsuits, coupled with the equality body’s adopted approach of irrationally liberal construction of protected grounds (which are, to start with, open-ended under the law). The effect of this approach is that the equality body progressively deconstructs the very concept of ‘ground’. In labour relations especially, it has come to declare any sort of bullying or unfavourable treatment to be discrimination regardless of it being based on no recognisable ground, like the six EC-protected grounds, but instead on extraneous or fortuitous factors, like personal strife and other random circumstances. This is further compounded by the fact that the law itself protects uncomfortable grounds like education, personal status and property on a par with the EC-protected grounds. Not helpful in this regard, the equality body’s case law has interpreted such grounds broadly, accepting, for instance, that personal status encompasses place of residence and dress of the moment. The share of equality body cases on such non-grounds is the largest in its docket.



1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

Art. 6 (2) of the Constitution bans discrimination on grounds of, exhaustively, race, national origin, ethnicity, sex, origin, religion, education, conviction, political affiliation, personal or public status, and property status. Disability, sexual orientation and age are not protected. This provision is universal in scope and applies to all areas covered by the Directives, as well as to any other areas beyond those.

- b) *Are constitutional anti-discrimination provisions directly applicable?*

The Constitutional equality guarantee is directly applicable and prevails over any other norm in legislation.

- c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

The Constitutional equality clause is enforceable against private, as well as public parties.



2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The Protection Against Discrimination Act, the special integrated anti-discrimination law, bans discrimination on grounds of sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or international treaty Bulgaria is party to.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*
Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

Racial/ethnic origin and *age* are not defined at all. *Religion/belief* is not defined under discrimination law. *Sexual orientation* is defined under the Protection Against Discrimination Act, § 1.9 Additional Provision, as "heterosexual, homosexual or bisexual orientation." *Disability* is defined under the Integration of Persons with Disabilities Act, § 1.1 Additional Provision, as "any loss or impairment of the anatomical structure, physiology, or psychology of an individual." This is broader than the concept of disability elaborated by the ECJ in case C –13/05 as it does not require the limitation to result in "hinder[ing] the participation of the person concerned in professional life". The impairment/limitation itself is sufficient, regardless of what result it may have on the individual's professional life. Further, this national definition is broader in material scope because it applies to any field, including but not limited to, professional life. The Integration of Persons with Disabilities Act, § 1.2 Additional Provision, further defines *permanent disability* as "anatomical, physiological, or psychological impairment resulting in a permanent reduction of an individual's abilities to perform activities in a manner and to an extent possible for a healthy individual, where the medical authorities have certified a reduction in working ability or social adaptability of a degree of 50 per cent or more."⁴

⁴ This definition is reproduced literally in the Employment Encouragement Act, § 1.29 Additional Provision.



This definition of permanent disability is narrower than the ECJ concept of disability as it requires three additional elements – permanence of what is effectively the equivalent of a hindrance to participation, a threshold of 50% incapacitation, and official medical certification of the latter. Persons with permanent disabilities are entitled to extended protection and inclusion measures.⁵

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion'; or a "disability", sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?*

There is under the Employment Encouragement Act, § 1.4a Additional Provision, a definition of “groups of unequal status at the labour market”, which intersects with a number of protected grounds.⁶ This definition is only relevant for purposes of the positive measures provided for under the Employment Encouragement Act. Recital 17 of Directive 2000/78/EC is not reflected in the national law. There is, further, a definition of “adult” under the Employment Encouragement Act, § 1.18 Additional Provision, which only applies to the positive measures this Act provides for.⁷ Further, under the Religious Denominations Act, a *religious denomination* is defined as “a set of beliefs and principles, a religious community, and its religious institution”.⁸ A *religious community*, too, is defined under this Act, as a “voluntary union of natural persons for purposes of manifestation of a certain religion, and performance of worship, religious rituals and ceremonies.”⁹ Under this Act, further, a *religious institution* is defined as “a religious community registered in accordance with the Religious Denominations Act that has the capacity of a legal person, governing bodies, and a statute.” There is no defined statutory relationship between these definitions and the concept of religion as a protected ground within the meaning of the Protection Against Discrimination Act. Neither have the courts elaborated on this. The courts have not defined race, or ethnicity. Implicitly, however, they distinguish between those two concepts, not accepting, for instance, that anti-Roma discrimination is racial. This is a tradition dating back to Communist times when race was considered to denote being “negro”¹⁰ as opposed to white. This outdated concept of race as not including ethnicity has been used by criminal justice authorities, for instance, as a pretext not to enforce criminal law provisions on racist hate crime against attackers targeting Roma. The judicial authorities’ clear, albeit implicit, position is that discrimination against ethnic minorities, such as the Roma, Turks, etc., is discrimination based on ethnicity.

⁵ Under the Integration of Persons with Disabilities Act, they are guaranteed, *inter alia*: a monthly monetary supplement for transportation, information and telecommunications, rehabilitation, medication, municipal housing rent, and dietary products (art. 42); employment contracts no shorter than 3 years with employers who have been awarded public monies for reasonable accommodation (art. 25); no less than half of the quota of special jobs appointed for reassignment under the Labour Code (art. 27); tax preferences for working persons; a monthly supplement in the amount of 70% of the minimum working wage for parents and carers for children with permanent disabilities (art. 43); targeted assistance and alleviations for the purchasing of a car, housing restructuring, and personal assistants; stipends and other alleviations for students; municipal housing.

⁶ “Groups of unequal status at the labour market” shall be groups of unemployed people of lesser competitiveness at the labour market, including: unemployed youth; unemployed youth with permanent disabilities; unemployed youth educated in social care institutions; long-term unemployed persons; unemployed persons with permanent disabilities; unemployed persons – single parents (adopted parents) and/or mothers (adopted mothers) with children not older than 3 years; unemployed persons who have served a prison sentence; unemployed persons older than 50 years; unemployed persons with elementary or lesser schooling and no vocational qualification; other groups of unemployed persons.

⁷ “Adult” shall be a person in working age who is not being educated in [school] or [university] and who has not reached the respective pensionable age for women and men provided for under the Social Security Code.

⁸ Transitional and Final Provisions, § 1.1.

⁹ Transitional and Final Provisions, § 1.2.

¹⁰ As the overwhelming majority of Bulgarians still refer to people of African origin.



- c) *Are there any restrictions related to the scope of ‘age’ as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

There are no restrictions on the scope of age as a protected ground under discrimination law.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.*

Multiple discrimination is defined under the Protection Against Discrimination Act, § 1.10 Additional Provision, as “discrimination on more than one of the [protected] grounds”. The Protection Against Discrimination Act, art. 11 (2), places a positive duty on all public bodies, central as well as local, to take as a priority positive measures to equalise opportunities for victims of multiple discrimination. The Protection Against Discrimination Act, art. 48 (3), further provides that the equality body, the Protection Against Discrimination Commission, will hear cases of multiple discrimination sitting in extended benches of five rather than three members. In terms of case law, there have been several cases against dismissals on alleged ethnic and political grounds brought by Roma or Bulgarians from regions where local government administrations are dominated by the Movement for Rights and Freedoms, a party of predominantly Turkish background and orientation. Claimants have argued that they were sacked from their jobs in municipal structures because they are not Turkish and do not support the Movement for Rights and Freedoms, only to be replaced by Turkish people with arguably less qualifications or experience. None of these claims have been upheld by the courts or the equality body.¹¹

2.1.2 Assumed and associated discrimination

- a) *Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*
- b) *Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

The Protection Against Discrimination Act, § 1.8 Additional Provision, defines “on grounds of” as “the actual, present or past, or assumed possession of one or more of [the] characteristics by the person discriminated against, or by another person who is, actually or presumably, associated with the person discriminated against, where this association is the cause of the discrimination.” In this way, the law expressly bans discrimination by presumption, as well as by association, including by presumed association.

2.2 Direct discrimination (Article 2(2)(a))

- a) *How is direct discrimination defined in national law?*

The Protection Against Discrimination Act, art. 4 (2), defines direct discrimination as “treating a person on grounds [...] less favourably than another person is treated, has been treated, or would be treated in comparable circumstances”.

¹¹ There appears to be a tacit reluctance to deal with ethno-political issues, perceived as sensitive.



- b) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The Protection Against Discrimination Act does not permit general justification for direct discrimination with respect to any grounds.

It provides for an exhaustive list of specific exceptions for all protected ground, including the six EC grounds.¹² Because of the open-ended nature of the list of protected grounds, combined with the universal scope of the ban, this closed list of express exceptions should generate problems for future jurisprudence.

- c) *In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?*

The Protection Against Discrimination Act does not provide an age-specific definition of “less favourable treatment”. It defines “less favourable treatment” with respect to all protected grounds as “any act, action or omission, directly or indirectly affecting [a person’s] rights or legal interests”.¹³ In this way, it expressly guarantees that any conduct, including inaction vis-a-vis a pre-existing status quo, as well as formal official decisions by public institutions, could constitute discrimination. Just how the comparison is to be made is left to judges’ discretion.

2.2.1 Situation Testing

- a) *Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court. For what discrimination grounds is situation testing permitted? If all grounds are not included, what are the reasons given for this limitation?*

National law makes no provision on testing. General civil evidentiary rules put no limit on the admissible types of proof.¹⁴ Therefore, testing, as well as any other type of evidentiary tool, is implicitly allowed as a matter of course. The admissibility and merit of testing data in a particular case will be for the court to decide.

- b) *Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

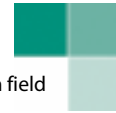
There is no controversy regarding the admissibility of testing. The concept is generally unfamiliar, except to a limited number of NGO lawyers and activists. Evolution in public, and judicial, understanding and acceptance of testing for legal purposes is yet to be initiated. testing as such has been explicitly discussed as such in a single case to date.¹⁵ In its decision the court explicitly rejected the argument by respondent that testers’ testimonies were not credible.

¹² Art. 7 Protection Against Discrimination Act. For specifics, see below, title 4. *Exceptions*.

¹³ § 1.7 Additional Provision.

¹⁴ Art. 12, Civil Procedural Code.

¹⁵ Case N 453 of 2006 before the Pazardzhik Regional Court, 3rd appeals panel, *Krassimir Anguelov v Optima Group OOD*.



c) *Outline important case-law within the national legal system on this issue.*

While there have been cases decided on the basis of testing testimony, neither the parties' submissions, nor the judges' reasons have specifically addressed the fact that the witnesses and claimants had acted as testers for a public interest purpose. Witness testimonies by testers have been presented and treated as ordinary witness testimonies, and testers' standing as claimants has been recognised based solely on their identity and the less favourable treatment they suffered, with no discussion of their interest as testers in accessing the particular opportunity.

d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

NGOs have used testing to uncover practices of denial of access to jobs and public places and services, such as discotheques, cafeterias, restaurants, court houses, with regard to Roma.

2.3 Indirect discrimination (Article 2(2)(b))

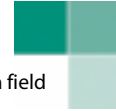
a) *How is indirect discrimination defined in national law?*

The Protection Against Discrimination Act, art. 4 (3), defines indirect discrimination as “putting a person on [protected] grounds [...], through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary”.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

The test for justification is one of necessity. Neither the law, nor the case law have yet specified whether this is to be understood as strict proportionality rather than mere proportionality. There is no legislative or judicial guidance on what constitutes a “legitimate aim”. There is a dearth of indirect discrimination cases yet and the case law has not yet evolved a standard for either “a legitimate aim” or “an appropriate and necessary measure”. As a rule, judges have failed to undertake a proper analysis of necessity, including by looking into alternatives to impugned measures. In most cases, they have accepted declarations of necessity by respondents without questioning the linkage between the asserted aim and the specific measures complained of.¹⁶ In this way, they have failed to properly apply the shifting burden of proof rule, *de facto* excusing respondents of their onus to establish a justification for disparate impact.

¹⁶ For details, see footnote N 216 below.



c) *Is this compatible with the Directives?*

The legal test for justification is compatible with the Directives. What is incompatible, however, is the way in which the definition refers to “on [protected] grounds” creating a possibility for indirect discrimination to be understood as a provision based on a protected ground, with “apparently neutral” taken to mean that the ground as a basis for the provision is concealed by a false or lacking explanation. A number of judicial decisions have shown a serious misunderstanding of the concept of indirect discrimination, some fusing it with direct discrimination.¹⁷ The adverse implications in such cases are serious because the absolute ban on direct discrimination is then diluted in such judges’ reasoning by the general justification test valid only for indirect discrimination. In addition, even in cases where conduct is properly dealt with as indirect discrimination by judges, the case law is overall weak, because as a rule judges do not strictly assess respondents’ justifications.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

The Protection Against Discrimination Act makes no specific provision regarding age when defining discrimination, or the concept of the comparison inherent therein.

e) *Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?*

There has been no case law or other debate on language-based differential treatment as an issue of potential indirect race discrimination. In one case, where the issue was a ban by a police investigator on the use of Romani by a woman in custody speaking to her partner, both the equality body and the Supreme Administrative Court on appeal discussed the interference in terms of direct, rather than indirect, ethnic discrimination.¹⁸ In another case, where the issue was a requirement for Turkish language skills for purposes of admission to a Muslim religious school the equality body refused to find discrimination without discussing whether such a requirement might have a disparate impact on particular ethnic groups.¹⁹ In effect, however, that was the real issue. The argument by the complainant was that this Turkish language requirement disproportionately excluded Muslim students from southern Bulgaria. In southern Bulgaria the share of non-Turkish Muslims is greater due to the concentration of Pomaks or Bulgarian-speaking Muslims than it is in the north where the respondent school is based. Neither the complainant, however, nor the equality body articulated this as a race argument. The main reason for the equality body not to find discrimination was that Muslim students from southern Bulgaria could receive the same education at a different school there that posed no Turkish language requirement.

¹⁷ For details, see footnote N 216 below.

¹⁸ Decision N 59A of 30.11.2006 in case N 21 of 2005 before the Protection Against Discrimination Commission, *Toma Mladenov v Galin Grigorov*; Decision N 7914 of 24.07.2007 in case N 1219/2007 before the Supreme Administrative Court, on appeal. Neither the equality body, nor the Supreme Administrative Court discussed a definition of ethnic origin as a protected ground, or the place of language as an aspect of it. They seemed to proceed on a tacit understanding that Roma language was self-evidently a manifestation of Roma ethnicity and as such, equivalent to it in terms of serving as a ground for adverse treatment.

¹⁹ Decision N 41 of 09.05.2007 in case N 178, *Ahmed Aliev v Medium General Spiritual School - Rousse et al.* The reason for the requirement was an order by the Office of the Grand Mufti to the effect that Turkish-speaking Muslim students were to be concentrated in the respondent school, while Bulgarian-speaking ones – in another Muslim school in the South-eastern part of the country in order to teach them classes accordingly in the respective language. The equality body perceived this order and the ensuing requirement as discretionary management of Muslim schools by the Office of the Grand Mufti, and not as a positive measure of any sort.



In another case, where an employer had posed a job requirement for Bulgarian as a “mother tongue”, the equality body initiated an *ex officio* inquiry on allegations that this constituted direct ethnic discrimination.²⁰

2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

National law implicitly permits any type of evidence in civil cases, including statistical evidence.²¹ There are no particular conditions for admission of statistics in lawsuits.

The admission and evaluation of all evidence, implicitly including statistics, is left to judges’ discretion.²²

- b) *Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

Statistics have only been used in few discrimination cases yet. There has been no debate, or evolution surrounding their use and admission in court. The court has accepted the data as a matter of course.

- c) *Please illustrate the most important case law in this area.*

Trial court judges in the capital, Sofia, have rendered several decisions in cases concerning sex quotas for admission to university. Such quotas for some disciplines, including law, have resulted in less favourable conditions for women, whose average academic results are significantly higher than men’s, with the ensuing harsher competition for admission. The courts have discussed the legal issue based on the statistically established fact that women with higher academic scores have been denied admission for the benefit of men with lower results. In other cases, courts have accepted the predominance of Roma in the ethnic composition of certain residential areas as a fact based on statistics.²³ In another case, where the equality body initiated its own proceedings, it considered statistics produced by the National Statistical Institute regarding the ethnic composition of the population in a particular region of the country. It used that data to consider whether ethnic minorities had a corresponding share of participation in the governance of the public water supply company.

²⁰ Decision N 38 of 07.05.2007 in case N 11 of 2007 before the Protection Against Discrimination Commission. The body quite irrationally found that the employer “had made an involuntary technical mistake” by advertising the requirement for Bulgarian as a mother tongue. It “credited the respondent’s position that they meant a high level of command of the Bulgarian language close to [that] of a mother tongue”. However, the body “warned that in future the respondent must formulate precisely job advertisements [when] posing requirements for language skills”.

²¹ Art. 12, Civil Procedural Code.

²² Ibid. in conjunction with art. 10, Civil Procedural Code.

²³ Inter alia, decision N 185 of 01.02.2006 of the Plovdiv District Court in civil case N 1330/2005, decision N 1934 of 24.10.2006 of the Plovdiv Regional (appeals) Court in civil case N 862/2006, and decision N 1302 of 28.11.2007 of the Supreme Court of Cassation in civil case N 1602/2006, *Mehmet Denev v. Electroražpredelenie – Plovdiv AD*; decision N 58 of 29.11.2006 in case N 10/2006 before the Protection Against Discrimination Commission. Those statistics were presented by complainants in some cases, by respondents in others, or established in proceedings by witness testimony, or by expert opinion on the basis of official census statistics.



In yet another case where the equality body initiated an *ex officio* inquiry, it considered statistical data gathered by the Child Protection Agency concerning the ethnic makeup of the student body of remedial schools for children with mild intellectual disabilities.

d) Are there national rules, which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

Data collection is provided for under several separate pieces of legislation, including the Statistics Act, the Protection of Personal Data Act, the Census 2001 Act, the Integration of Persons with Disabilities Act, and the Ministry of Interior Act.

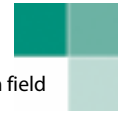
These laws protect data regarding: racial or ethnic origin; national origin; mother tongue; political, religious or philosophical convictions; membership in political parties, or organisations with political, religious, philosophical or trade union aims; health status; sexual life; personal life; human genome; or unlawful acts committed.²⁴ Such data may not be collected unless the person concerned consents, or in specific exceptions accompanied with procedural guarantees.

The exceptions include where: 1) this is necessary to carry out specific duties under labour law; 2) it is necessary to protect human life or health, and the person concerned is unable to give their consent; 3) the data is collected by a non-profit organisation, including with a political, philosophical, religious or trade union aim, in the course of its lawful activities, provided that this only involves the organisation's members or regular associates, and the data is not published without the consent of the person concerned; 4) the data has been published by the person concerned, or its collection is necessary for rights enforcement in court; 5) this is necessary for medical prevention or diagnostics, or provision of health services, provided that the data is processed by a medical professional or another person legally under a duty to keep a professional secret; 6) this is only for journalistic or artistic purposes, provided that the right to privacy of the person concerned is not infringed; or 7) a special law provides so. No law provides for the collection of ground-disaggregated data explicitly for purposes of equality litigation or policies.²⁵ Public bodies using positive measures do use statistics to design those. Such statistics are collected either by the National Statistical Institute, which is a public institution governed under the Statistics Act, or by certain public services themselves, or by private research agencies carrying out surveys on commission.²⁶

²⁴ Respectively, art. 21 (1); art. 5; art. 5 (3); art. 157 (1).

²⁵ While "data collection [...] necessary for rights enforcement in court" - point (4) above) *could* be construed as applicable to equality rights, this is certainly not express, and there was no such intention behind this provision. The legislative intent was more likely to authorise the police to provide individuals with data concerning the identity of parties they might wish to sue in court. This would not apply to policy-, or law-making as ends justifying data collection. Further, personal data is not necessarily statistical data. While it may be possible to gather data regarding the race of someone in particular, this is not equivalent to gathering race-disaggregated statistics. More importantly, this provision only authorises data collection in principle, and does not *mandate* it.

²⁶ The National Statistical Institute gathers statistics based on self-determination. Other public services gather statistics based on self-determination in some cases, and, in others, on perception. Private sociological agencies gather statistics of both types.



2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives*

The Protection Against Discrimination Act, § 1.1 Additional Provision, defines harassment as “any unwanted conduct related to [protected] grounds [...] and manifested physically, verbally or in any other manner, having the purpose or effect of violating the dignity of a person and of creating a hostile, offensive, or intimidating environment”.

- b) *Is harassment prohibited as a form of discrimination?*

The Protection Against Discrimination Act, art. 5, explicitly provides that harassment is a form of discrimination.

- c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

There is no further guidance on the concept of harassment, apart from a similar definition of sexual harassment under the Protection Against Discrimination Act.²⁷

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

The Protection Against Discrimination Act bans incitement to discrimination, and defines it to expressly include instructions to discriminate.²⁸ However, this definition may not be compatible with the Directives because it requires direct intent as an element, as well as for the perpetrator to be in a position to influence their audience. Under the Protection Against Discrimination Act, incitement to discrimination, including instructions to discriminate, is expressly defined as a form of discrimination.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. → does national law define what would be a “disproportionate burden” for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

²⁷ § 1.2 Additional Provision. “Sexual harassment” shall mean any unwanted conduct of a sexual nature manifested physically, verbally or in any other manner violating the dignity and honour of a person, and creating a hostile, offensive, degrading, or intimidating environment, in particular, where a refusal to accept such conduct, or a coerced acceptance of it could influence the making of decisions affecting that person.

²⁸ Art. 5 in conjunction with § 1.1, Additional Provision.



The Protection Against Discrimination Act, art. 16 and art. 32, provides for reasonable accommodation for persons with disabilities in, respectively, employment and education. The limit of the duty is when “the costs are unreasonably big and would seriously hinder” the employer or educator.²⁹ An identically-worded duty for employers is reproduced in the Integration of Persons with Disabilities Act.³⁰ Other than this language, there is no guidance under either law about what is “reasonable” or a “disproportionate burden”. There is no provision for taking existing opportunities for public financial help into account when determining what cost is excessive.

Further, under the Integration of Persons with Disabilities Act, the Minister of Education has a duty to provide children with disabilities with a supportive environment for their integrated education.³¹ This is an absolute duty under the legislation, with no disproportionate burden justification. The courts have held that this duty will only be satisfied when there is supportive environment for integrated education in every kindergarten and school in the nation.

Under the Integration of Persons with Disabilities Act, further, the Minister of Education has a duty to create educational opportunities for children with disabilities who are not integrated in a common educational environment.³² This duty, too, is absolute. Higher education institutions, too, have absolute accommodation duties under the Integration of Persons with Disabilities Act³³.

Under the Labour Code, too, employers are under a duty to provide accommodation for workers who are unable to perform their job because of illness or accident.³⁴ This duty pre-dates both the Protection Against Discrimination Act and the Integration of Persons with Disabilities Act.³⁵ It has no disproportionate burden limit. It is based upon instruction by the health authorities. An employer who fails to comply with such an instruction owes the employee compensation *ipso iure*.³⁶

Under the Healthy and Safe Work Conditions Act, employers are under a duty to provide the appropriate facilities for employees with reduced work capability, e.g. people with disabilities, at their workplaces.³⁷ Employers are to be assisted and consulted in adapting the job to employees’ capabilities, considering their physical and mental health, by special labour medicine authorities.³⁸

²⁹ Art. 16 and art. 32.

³⁰ Art. 24.

³¹ Art. 17.2.

³² Art. 18.

³³ Art. 20.

³⁴ Art. 314. Such accommodation can include both alleviations in work conditions for the same job, or reassignment to another job.

³⁵ The Labour Code, including this particular provision, has been in force since 1986.

³⁶ Art. 317 (4).

³⁷ Art. 16 (1.4).

³⁸ Art. 25 (2.3), Healthy and Safe Work Conditions Act. Those authorities are charged, inter alia, with monitoring and analysing employees’ health status (art. 25a (1.2) and (1.4) of the Act).



- b) *Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

Failure to meet the duties for reasonable accommodation in employment or education provided for under art. 16 and 32 of the Protection Against Discrimination Act is not defined as discrimination. There is no provision on such failure's relation to the bans on direct or indirect discrimination. This is also valid for failure to meet the various absolute accommodation duties under the Integration of Persons with Disabilities Act, the Labour Code, and the Healthy and Safe Work Conditions Act.

In several cases, judges have found that failure to provide what has been in effect reasonable accommodation to people with disabilities constituted direct (rather than indirect) discrimination.

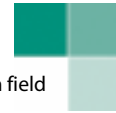
There is a disproportionate burden defence under the Protection Against Discrimination Act for employers and educators, namely where the costs are "unreasonably big" or would "seriously hinder" the organisation. There is no defence against the absolute ban on architectural environment that hinders persons with disabilities' access to public places under that Act. Therefore, there is no defence for failing to ensure unhindered access to public places. Under the Integration of Persons with Disabilities Act, there is proportionality defence for employers, but not for public bodies or universities.

However, the courts have systematically and blatantly disregarded the law in this respect, refusing to accept that partial/ineffectual measures are not enough for public bodies to deliver on their duties to provide accessibility. Judges have reasoned, on no legal basis, that creating accessibility was a "lengthy" and financially burdensome process, and, therefore, the remaining inaccessibility did not amount to unlawful inaction on the part of the authorities because of their having undertaken fractional measures.³⁹

- c) *Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

Under the Protection Against Discrimination Act, art. 13 (2), employers have a duty to provide reasonable accommodation for religion/ belief in terms of working hours and rest days, where "this would not lead to excessive difficulties [...] and where [it is possible] [...] to compensate for the possible adverse consequences on the [business]".

³⁹ Thus, Decision N 73 of 09.02.2007 of the Plovdiv Appellate Court in civil case N 51/2007, *Nikolay Ivanov v City of Plovdiv*; Decision N 96 of 19.02.2007 of the Plovdiv Appellate Court in civil case N 50/2007, *Nikola Kitukov v City of Plovdiv*; Decision N 144 of 29.06.2007 of the Plovdiv Appellate Court in civil case N 78/2007, *Lilyana Ivanova v City of Plovdiv*; Decision N 105 of 04.07.2007 of the Plovdiv Appellate Court in civil case N 81/2007, *Rossitza Belcheva v City of Plovdiv*. Such reasoning is in direct contravention to the Integration of Persons with Disabilities Act, which expressly stipulates an absolute time limit for accomplishing accessibility to public-owned buildings and infrastructure, now long gone – 31 December 2006 (Transitional and Final Provisions of the Act, § 6).



Under the Labour Code, **pregnant and nursing women** are entitled to accommodation too. They may refuse work that the government has determined poses a threat to their, or their babies' health.⁴⁰ Such women are entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.⁴¹ Where accommodation is impossible or unjustified, the employer is under a duty to do what is necessary to move the woman to another, appropriate job.⁴² Until the employer provides the woman with accommodation or a different job, she is entitled to not do the inappropriate job and still receive one monthly salary.⁴³ Employers are under a duty to assign workplaces and jobs suitable for nursing women each year.⁴⁴

d) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

Importantly, The Protection Against Discrimination Act, art. 5, stipulates that construction and maintenance of an architectural environment hindering the access of persons with disabilities to public places constitutes discrimination. The Act governs such construction and maintenance as a separate form of discrimination, alongside direct and indirect discrimination, harassment, incitement to discrimination, victimisation, etc. This ban on constructing or maintaining an architectural environment that hinders persons with disabilities' access to public places is an absolute one, with no proportionality defence.

In practice, however, in cases where persons with disabilities have contested the city government's failure to make the architectural environment accessible, the courts failed to hold the authorities liable for such omission, even though in two cases they declared that the public environment placed claimants at a disadvantage because it hampered their access to public places, and, therefore, constituted indirect discrimination against them. The courts have reasoned that the authorities had taken some action aimed at securing access to public places for persons with disabilities, and achieving that result was a lengthy and costly process. In effect, they have applied a proportionality test, even though they haven't called it that and despite the lack of legal basis for it.

Further, public bodies under the Integration of Persons with Disabilities Act have absolute duties to create disability-accessible architectural environments, transportation services, and sports facilities.⁴⁵ Failures to do so have been contested under general tort law, but not under discrimination law.

⁴⁰ Art. 307 (2) and (3), Labour Code.

⁴¹ Art. 309 (1), Labour Code.

⁴² Ibid.

⁴³ Art. 309 (2), Labour Code.

⁴⁴ Art. 309 (4), Labour Code.

⁴⁵ Art. 33-34, 36, 38.



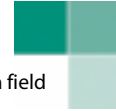
- e) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

Substantive disability rights are provided for under a number of laws, including, in the first place, the Integration of Persons with Disabilities Act. The Integration of Persons with Disabilities Act is the comprehensive law dealing with disability. It determines the bodies charged with disability policy, and stipulates their powers and duties. It governs the criteria and procedure for social assessment of disability and of the possibilities for integration of people with disabilities, as well as their prophylactics and rehabilitation. The Act bans both direct and indirect disability discrimination, and provides for reasonable accommodation in education, with duties for central and local government, and universities. It also provides for reasonable accommodation in employment, as well as for positive measures, including financial stimuli for employers. It further governs sheltered employment for persons with disabilities, termed “specialised enterprises and cooperatives of people with disabilities”, defining the criteria for those businesses recognition as “specialised enterprises” under the law. The Act creates duties for public bodies for architectural and infrastructural accessibility, including urban planning, transportation, sports facilities, kindergartens, and mass media information. It also provides for social protection of persons with disabilities, including via aids, devices, and medical facilities; for tax preferences for individuals and for sheltered employers; for monthly monetary supplements for integration and rehabilitation; as well as for targeted financial assistance and alleviations for particular goods and services. The Act finally provides for the means of funding the positive and accommodation measures provided for.

Further, the Labour Code provides for reasonable accommodation and sheltered employment for people with disabilities. It also provides for special protection against dismissal for persons with disabilities. Under the Code, workers who have received accommodation, and workers ailing from particular government-specified sicknesses, may not be dismissed at all unless the labour inspectorate consents beforehand.⁴⁶

The courts will invalidate any dismissal without the labour inspectorate’s prior consent. Further, the Employment Encouragement Act, and a number of special laws governing particular fields, such as education, taxation, and public procurement provide for special rights or positive measures for people with disabilities.

⁴⁶ Art. 333 (1.2-3).



The *Action Plan for Equal Opportunities for People with Disabilities 2006-2007*⁴⁷ and the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*⁴⁸ envisage the following non-individualised reasonable accommodation measures to be undertaken by different government institutions for persons with disabilities:

- a) Adapting public administration buildings, public transport, sports and cultural infrastructure;
- b) Providing specialized public transport;
- c) Maintaining a government-sponsored internet portal site for persons with disabilities;
- d) Adapting school infrastructure for children with disabilities;
- e) Providing social services in the community for children with disabilities;
- f) Appointment and additional training of a sufficient number of resource teachers in mainstream schools;

Provision of sufficient auxiliary equipment for persons with disabilities.

2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

The Regulations on Implementing the Social Assistance Act provide for the provision of sheltered accommodation as a social service in the community.⁴⁹ The Social Assistance Agency within the Ministry of Labour and Social Policy has issued two sets of Methodological Guidance outlining the conditions for providing this service, respectively, to people with intellectual disabilities, and to young people from social care institutions. The two sets of Guidance provide for the terms and conditions for opening and closing sheltered accommodation facilities; for their management and staffing; and for the use of the service by beneficiaries.

The Integration of Persons with Disabilities Act provides for employment of people with disabilities in a “specialised work environment”, as well as in integrated employment.⁵⁰ Further, the Labour Code provides for “specialised enterprises and workshops for persons with reduced working ability” and places a duty on the government and municipalities to set up such enterprises, and on large employers with more than 300 workers to set up such workshops.⁵¹

⁴⁷ Available at: www.mlsp.government.bg/bg/docs/program/plan.doc.

⁴⁸ Available at:

[http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/documents/strategies/plan_spec_potrebnosti.pdf](http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/documents/strategies/plan_spec_potrebности.pdf).

⁴⁹ Art. 36 (2.15).

⁵⁰ Art. 22.

⁵¹ Art. 316.



The terms and conditions of employment in those sheltered facilities are to be determined by the government.⁵² The Integration of Persons with Disabilities Act reserves the status of “specialised enterprises and cooperatives of people with disabilities” for businesses whose employees are at least 20% people with visual impairments or at least 30% people with hearing impairments, or at least 50% people with other disabilities.⁵³ Under this law, such businesses are eligible for government subsidies based on approval of particular projects.⁵⁴

Further, under the Public Procurement Act, such enterprises are entitled to exclusive standing to bid for public procurement deals for particular items determined by the government. Under tax and social security legislation, such enterprises are entitled to preferences and alleviations. In 2005, there were 91 specialised cooperatives and enterprises in Bulgaria, employing 14,573 people.⁵⁵ The market share of their production has been reduced in recent years, and a significant number of workplaces have been closed because their products could not meet market quality standards.⁵⁶ Specialised workplaces are segregated and inadequate to facilitate the integration of people with disabilities.

b) Would such activities be considered to constitute employment under national law?

Sheltered employment in “specialised enterprises and workshops” is unequivocally employment under national law.⁵⁷

⁵² Ibid.

⁵³ Art. 28 (1).

⁵⁴ Art. 28 (2).

⁵⁵ EUMAP, Rights of People with Intellectual Disabilities: Bulgaria 2005, http://www.eumap.org/topics/inteldis/reports/national/bulgaria/id_bul.pdf.

⁵⁶ Ibid.

⁵⁷ Art. 22, Integration of Persons with Disabilities Act; art. 320, Labour Code.



3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Non-nationals within the territory, as well as nationals are entitled to protection from discrimination on any ground other than nationality.⁵⁸ Non-nationals, however, are protected from discrimination based on nationality only insofar as such discrimination has no basis in primary legislation.⁵⁹ In other words, Parliament may make law that discriminates against non-nationals, but executive bodies and private parties have no discretion to make such decisions without legal basis. Parliament is free to adopt discriminatory Acts based on nationality, with no constitutional limit to its discretion.⁶⁰

Legal residence is irrelevant to entitlement to anti-discrimination protection; only factual being within the territory is a condition.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Protection Against Discrimination Act makes no distinction between individuals and legal entities in terms of binding them by the ban on discrimination.

Legal entities and non-incorporated associations are protected, as well as individuals, where the former suffer discrimination on grounds of characteristics of their employees or members.⁶¹ While the courts and the equality body have generally recognised the victim standing of the legal persons in various cases, in one case, the Supreme Administrative Court has made a dictum in direct contravention to the law that only natural persons could be victims of discrimination.⁶²

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

⁵⁸ Protection Against Discrimination Act, art. 3 (1).

⁵⁹ Protection Against Discrimination Act, art. 7 (1.1).

⁶⁰ Art. 26 (2) of the Constitution.

⁶¹ Art. 3 (2), Protection Against Discrimination Act.

⁶² Decision N 5936 of 12.06.2007 in case N 420/2007, *National Association of the Blind-Deaf in Bulgaria v. Commission for Protection Against Discrimination*, p. 4.



Under general tort law, any legal entity, be it an employer or service-provider, or public body, is liable for any act or omission by its employees, where such act has caused damages, including in cases of discrimination.⁶³ Courts have interpreted the Protection Against Discrimination Act as providing a basis to hold legal entities liable for discrimination by their employees even where no damages, but other remedies have been sought. However, legal entities may not be held accountable for the actions of parties they have no control of, such as other customers, clients, users or contractors. Individual discriminators, including harassers, can as a matter of course be taken to court or to the equality body. Conscious abettors, too, can expressly be held liable.⁶⁴ Organisations are not liable for their members' conduct.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

The Protection Against Discrimination Act explicitly applies universally to the exercise of all rights and freedoms deriving from law, implicitly including in full any particular field such as any sector of employment and occupation, and all the other fields mentioned under the Racial Equality Directive.⁶⁵ In addition, it expressly bans specific examples of conduct amounting to direct discrimination in key fields, including employment and occupation, education, and service-provision. In respect of its universal material scope, including all fields under the EC Directives and far beyond, the law is clear and no case law has presented issues. On the contrary, a number of decisions both by the courts and by the equality body expressly recognise that the Act provides comprehensive, total protection. No ruling has questioned the applicability *ratione materiae* of the Act.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) **Is the public sector dealt with differently to the private sector?**

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁶⁶ The public sector is governed in the same way as the private one.

⁶³ Contracts and Obligations Act, art. 45 in conjunction with art. 49.

⁶⁴ Protection Against Discrimination Act, art. 8.

⁶⁵ Protection Against Discrimination Act, art. 6.

⁶⁶ Ibid.



3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

- a) *Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.*

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁶⁷

- b) *In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78?*

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds,⁶⁸ providing for an exception for age only for purposes of pensions in general, including occupational ones.⁶⁹

This particular age exception provides for no proportionality requirement. Under the Social Security Code, entitlement to occupational pension is conditional on reaching the age of 60 for both women and men.⁷⁰ If provided for under a collective agreement, a person may start receiving such a pension 5 years prior to reaching that age but not earlier.⁷¹ Therefore, direct differentiation based on age is formally lawful in respect of occupational pensions.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning course?

The Protection Against Discrimination Act implicitly applies fully to all vocational training courses, including those outside the employment relationship, as well as to university courses, with respect to all grounds.⁷²

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁷³

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Art. 7 (1.8).

⁷⁰ Art. 243 (4).

⁷¹ Art. 243 (6).

⁷² Ibid.

⁷³ Ibid.



3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁷⁴ The Protection Against Discrimination Act only relies on the exception in Article 3(3) of Directive 2000/78 with respect to age, and no other ground, as concerns pension ages,⁷⁵ and nothing else.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁷⁶

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁷⁷ Patterns of educational exclusion/ segregation of Roma include: 1) children at home, or in the street with no access to school at all; 2) children in separate schools in segregated residential areas (ghettoes); 3) children in separate classrooms in mainstream schools; 4) children in remedial schools (disproportionate representation); 5) children in schools for juvenile delinquents (disproportionate representation). There have been a few cases brought to court to challenge all-Romani schools.⁷⁸ In *European Roma Rights Centre v Ministry of Education et al* the trial court in Sofia held that the situation in one such school constituted segregation within the meaning of the Protection Against Discrimination Act.⁷⁹

⁷⁴ Ibid.

⁷⁵ Art. 7 (1.8).

⁷⁶ Art. 6.

⁷⁷ Ibid.

⁷⁸ There is one case where segregation of *Turkish* children in separate classes was successfully challenged before the equality authority too (decision N 91 of 08.11.2007 in case N 28/2007).

⁷⁹ Decision of 22.07.2005 of the Sofia District Court, 41 panel, in case N 11630 of 2004. The judge reasoned that the absence of real free choice for Romani students not to study in isolation in the ghetto school constituted compulsion for purposes of the definition of segregation under the Protection Against Discrimination Act. She held that Roma students did not study in the separate school because of their own free will but because they were dispossessed of any real practical alternatives due to external pressures created by omissions on the part of the authorities to act against segregation.



Two other cases were lost however.⁸⁰ In a case concerning the disproportionate representation of Roma children in special schools instituted *ex officio* by the equality body, the latter has instructed the Minister of Education to plan concrete measures to abort the admission of healthy children in those schools, as well as to stop the educational authorities' practice of determining the ethnicity of children based on officials' perception rather than on the children's and their families' own self-determination.⁸¹

Patterns of educational exclusion/ segregation of children with disabilities include: 1) children with severe and profound mental disabilities in social care institutions, or at home with no access to schooling at all; 2) children in separate special remedial schools for various types of impairments; 3) children in separate classrooms in mainstream schools.

Current debates include whether *de facto* separation without coercion by law or administrative act constitutes "segregation" or not. Officials claim that it does not; civil society advocates maintain that it does.

A couple of years ago, there was a debate whether remedial schools could at all be equitable considering their very nature which is to separate children with disabilities from the rest. Advocates argued that only integrated schooling was acceptable regardless of disability, while officials maintained that remedial schools could be of use if properly resourced. Now officials no longer make this claim, and the consensus is that all children should be schooled together, including children with severe and profound mental disabilities, with reasonable accommodation in terms of curriculum and special additional resources. Another debate of the past linked to this was whether children with severe or profound mental disabilities were at all schoolable, or should be left in social care facilities with no education at all. Officials no longer publicly assert that such children cannot be educated at all. However, privately, many among them would manifest no conviction that investment in such children's education is worthwhile with the ensuing lack of administrative will to deinstitutionalise and integrate students with severe and profound mental impairments.

3.2.9 Access to and supply of goods and services, which are available to the public (Article 3(1)(h) Directive 2000/43)

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

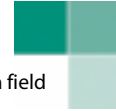
The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.⁸² It does not distinguish between publicly and privately available services and goods. In one case, however, without formally making such a distinction, the Supreme Administrative Court on appeal against a ruling by the equality body found that higher prices for non-members imposed by an association of visually impaired persons for access to phonographic library services were not discrimination.⁸³

⁸⁰ Decision N 139 of 01.12.2005 of the Blagoevgrad Regional Court in case 1154/2004 and decision of 16.12.2005 of the Sofia Regional Court in case 871/2005 (both confirming negative trial court rulings on appeal).

⁸¹ Decision N 80 of 16.10.2007 of the Protection Against Discrimination Commission. The rationale would be that mistakes are made when officials decide for themselves what the ethnicity of other people is without consulting them and, no less important, that it is disrespectful to assume a determining role with respect to another's identity rather than leave this to them.

⁸² Ibid.

⁸³ *Anguel Manin and Marin Kirkovski v. Protection Against Discrimination Commission*, Decision № 451 of 14.01.08 in case № 10322/2007, Supreme Administrative Court.



3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups.

The Protection Against Discrimination Act implicitly applies fully to all aspects of this field with respect to all grounds.⁸⁴

The majority of Roma live in ghettos in dire conditions in substandard housing, some of it ramshackle, with very limited access to basic infrastructure, security of tenure or essential services, such as public transportation, emergency medical aid, garbage collection, policing, and, for some, even electricity and water supply.

The housing situation of Roma is a clear case of discrimination. In many places the local authorities have for decades utterly ignored their housing and infrastructure needs, investing nothing in development of residential areas populated by Roma. In many places the authorities have consistently refused to include Roma residential areas in urban planning and to regulate them. Forced evictions and the lack of social protection for the people rendered homeless by them have further compounded this situation. Roma, on the other hand, tend to live together in concentrated communities isolated from the rest of the population because this gives them a sense of security in a hostile environment.

⁸⁴ Ibid.



4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The Protection Against Discrimination Act provides for an exception for genuine and determining occupational requirements for all grounds that is compatible with the Directives.⁸⁵ The language is: “The following shall not constitute discrimination: [...] different treatment of persons based on a characteristic related to the [protected] grounds [...] where, by reason of the nature of a particular occupation or activity, or of the conditions it is carried out in, such a characteristic constitutes an essential and determining occupational requirement, the aim is legitimate and the requirement does not exceed what is necessary to accomplish it;[...]”

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

The Protection Against Discrimination Act provides for an exception for employers with a religious/belief ethos that is, overall, compatible with the Directive.⁸⁶ The exception is for “different treatment of persons on grounds of religion, faith or gender with respect to an occupation carried out in religious institutions or organisations where, by reason of the nature of the occupation, or of the conditions it is carried out in, religion, faith or gender constitutes an essential and determining professional requirement in view of the nature of the institution or organisation, where the aim is legitimate and the requirement does not exceed the necessary to accomplish it;[...]”. There is, though, an inconsistency in wording between the Directive and the Act: rather than define the occupational requirement as “genuine, legitimate and justified”, the Act terms it “genuine and determining”, making it in this way arguably stricter than under the Directive. With respect to religious ethos institutions, the Act also exempts “different treatment of persons on grounds of religion/faith or sex in religious education or training, including training or education for the purposes of carrying out an occupation in a religious-ethos institution;”.⁸⁷

b) *Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?*

There are no provisions or case law governing potential conflicts between religious rights to discrimination and equality rights.

⁸⁵ Art. 7 (1.2).

⁸⁶ Art. 7 (1.3).

⁸⁷ Art. 7 (1.4).



4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

The Protection Against Discrimination Act makes no exception for the armed forces in relation to age or disability within the meaning of art. 3 (4) of the Directive. However, the special law governing the professional army provides for age and “ability” requirements for access to recruitment.⁸⁸ “Ability” for recruitment purposes is required to be medically certified.⁸⁹ This legislation and the Protection Against Discrimination Act are in unresolved conflict, which in practice arguably renders the age and disability discrimination ban under the Protection Against Discrimination Act void when applied to employment in the army.

- b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

The Protection Against Discrimination Act makes no exception for police, prison or emergency services. However, the Ministry of Interior Act, which governs recruitment in those services, provides for age and “psycho-physical ability” requirements for access to employment.⁹⁰ Persons who do not comply with those requirements are not even allowed to apply.⁹¹ Applicants must be “clinically healthy, not suffer from mental illnesses, and be medically able”.⁹² The requisite healthiness and ability is to be certified by an expert medical commission.⁹³ Therefore, the legislation governing the police and other services within the meaning of Recital 18 and the Protection Against Discrimination Act are in conflict, which in practice arguably renders the age and disability discrimination ban under the Protection Against Discrimination Act void when applied to employment in the police and other such services.

- c) *Are there cases where religious institutions can select people (on the basis of their religion) to hire or to dismiss from a job - when that job is in a state entity, or in an entity financed by the State (example: the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

There is no possibility under national law for a religious institution to make employment decisions for the government.

⁸⁸ Art. 116, Defence and Armed Forces of the Republic of Bulgaria Act.

⁸⁹ Art. 13, Professional Army Service Regulations.

⁹⁰ Art. 179.

⁹¹ Art. 3 (1), Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.

⁹² Art. 3 (3.3), Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.

⁹³ Art. 4, Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.



4.4 Nationality discrimination (Art. 3(2))

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status? What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination? Is there overlap in case law between discrimination on grounds of nationality and ethnicity (ie where nationality discrimination may constitute ethnic discrimination as well)?*
- b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

The Protection Against Discrimination Act treats nationality in principle as a protected ground, banning all forms of discrimination based on it in all fields of life.⁹⁴ It makes a significant exception, however, for differential treatment based on nationality that is provided for under primary legislation.⁹⁵ Therefore, executive and local government bodies, as well as private parties, are not allowed to treat non-nationals differently based on their nationality, unless Parliament has authorised such treatment by law. Under the Protection Against Discrimination Act, both nationality and a lack of any nationality are included in the concept of nationality as a protected ground.⁹⁶

The law does not stipulate any relationship between nationality and race/ ethnicity, either in terms of indirect discrimination, or otherwise. No case law has discussed any overlap between nationality and race/ethnic discrimination.⁹⁷

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

- a) *Does national law permit an employer to provide benefits that are limited to those employees who are married?*

National law does not permit employers to exclude unmarried employees from access to work-related benefits.

⁹⁴ Art. 4 (1).

⁹⁵ Art. 7 (1.1).

⁹⁶ Art. 7 (1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

⁹⁷ In 2003, when the Directives were transposed via the Protection Against Discrimination Act, there were a number of legal provisions differentiating on grounds of nationality. There still are. Those have never been reviewed to reveal whether they might be indirectly discriminatory against racial groups.



The Protection Against Discrimination Act implicitly bans such discrimination based on marital status.

- b) *Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?*

The Protection Against Discrimination Act implicitly bans employers from excluding same-sex partner employees from access to benefits. This Act bans all discrimination based on sexual orientation, including by association.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

There are no exceptions for health and safety related to any of the protected grounds, including disability, under the Protection Against Discrimination Act. However, under the Healthy and Safe Work Conditions Act, employers have a duty to assign to their employees only tasks that are compatible with their capabilities,⁹⁸ considering the specific dangers for employees with reduced work capability.⁹⁹ Further, there are a number of laws and secondary legislation instruments governing specific fields, such as transportation, including aviation, and other risk-intensive occupations, that provide for health requirements for access to employment in those fields. These norms providing for disability restrictions without any proportionality requirement conflict with the Protection Against Discrimination Act's ban on disability discrimination in all cases, apart from exhaustive specific exceptions.

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

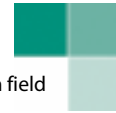
- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

Under the Protection Against Discrimination Act, there is no general possibility for justifying direct discrimination on any ground, including age. Direct discrimination, including on grounds of age, is only allowed in exhaustive specific exceptional cases. In all but one cases where the Protection Against Discrimination Act makes an exception for differential treatment based on age, it stipulates a proportionality test, requiring the difference of treatment not to exceed what is necessary for the achievement of a legitimate aim.¹⁰⁰

⁹⁸ Art. 16 (1.2a).

⁹⁹ Art. 16 (1.3).

¹⁰⁰ Art. 7 (1.5-6) and (1.11).



The only exception for age discrimination under the Protection Against Discrimination Act, which is not compatible with the proportionality principle, is for pension ages – it requires no objective justification for age-based different treatment for purposes of entitlement to pensions, including occupational pensions.¹⁰¹ While this exception concerns different treatment provided for by domestic law and may not pose an age discrimination problem under Community law in light of Recital 14 to Directive 2000/78, it is framed in absolute terms without regard to legitimacy of aim or necessity of means, allowing for arbitrariness in the handling of age in the pensions context. Furthermore, while the legislation governing occupational pensions at present provides for no different ages for women and men, this exception under the Protection Against Discrimination Act does not bar sex differentiation in occupational pension ages - arguably an issue under Art. 6 (2) of the Framework Directive.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

The Protection Against Discrimination Act permits the fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.¹⁰² It further permits the fixing of maximum age requirements for recruitment linked to the training requirements of the post in question, or the need for a reasonable period of employment before retirement, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.¹⁰³ The Act also permits the fixing of requirements for minimum and maximum age for access to training or education provided that it is objectively justified by a legitimate aim in view of the nature of the training or education, or the conditions it is carried out in, and the means to accomplish such aim do not exceed what is necessary.¹⁰⁴ This latter exception may fall within the scope of Directive 2000/78 insofar as it implicitly applies to vocational training, as well as other education and training. Last, the Act problematically permits unjustified requirements for age and length of service for purposes of retirement.¹⁰⁵

c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2)?

The Protection Against Discrimination Act allows for age requirements for purposes of pensions in general, including occupational ones, without requiring those requirements to be justified, or to avoid producing sex discrimination.¹⁰⁶

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

¹⁰¹ Art. 7 (1.8.).

¹⁰² Art. 7 (1.5.).

¹⁰³ Art. 7 (1.6.).

¹⁰⁴ Art. 7 (1.11.).

¹⁰⁵ Art. 7 (1.8.).

¹⁰⁶ Ibid.



Under the Labour Code, an employer may assist young employees.¹⁰⁷ Under this Code, underage employees are entitled to special protection.

¹⁰⁷ Art. 294.6.



The minimal age for access to employment is 16 years.¹⁰⁸ As an exception, 15-to-16-year-olds may be employed for light jobs that are not dangerous or harmful to them, and do not hamper their regular schooling or vocational training.¹⁰⁹ Such persons may be employed only after a comprehensive medical examination certifying their capability for the job and the fact that it won't harm their health or development.¹¹⁰ Further, the employment of any such individual must be authorised by the authorities.¹¹¹ Similar requirements are provided for in the case of 16-to-18-year-olds too.¹¹² Underage employees may not do work which is beyond their capabilities, or harmful, or involving risks that an underage person is assumed to be unable to understand or to avoid due to their immaturity.¹¹³ Under the Labour Code, further, employers are under a duty to give special care to underage employees by providing them with alleviated conditions for work and vocational training.¹¹⁴ An employer is under a duty to warn underage employees and their parents of the risks involved in the job and of the health and safety measures.¹¹⁵ Underage employees may not work more than 35 hours a week, or 7 hours a day, including vocational training time.¹¹⁶ Such employees are entitled to no less than 26 working days annual leave.¹¹⁷

Under the Employment Encouragement Act, an employer who creates a new job and hires a person not older than 29 years to do it is entitled to monies from the state for reimbursement of that person's salaries for up to a year.¹¹⁸ Under this Act, further, an employer who creates a new intern position and hires a person not older than 29 years to fill it is entitled to monies from the state for reimbursement of that person's salaries for up to six months.¹¹⁹

Under the Employment Encouragement Act, further, older workers are provided special conditions. An employer who creates a new job and hires a person older than 50 years to do it is entitled to monies from the state for reimbursement of that person's salaries for up to a year.¹²⁰ Further, under this Act, vocational institutions are entitled to subsidies for training workers aged between 50 and 64 years where that training is organised by the employer together with the Employment Agency.¹²¹

Older workers have special protection under the Labour Code too. In cases where workers are dismissed after reaching retirement age, regardless of the basis for their dismissal, they are entitled to compensation in the amount of 2 monthly salaries, and if they have worked with the employer for the last ten years, that compensation is in the amount of 6 monthly salaries.¹²² By contrast, workers who are made redundant prior to having reached pension age are only entitled to no more than one month's salary in compensation.

¹⁰⁸ Art. 301 (1).

¹⁰⁹ Art. 301 (2), Labour Code.

¹¹⁰ Art. 302 (1), Labour Code.

¹¹¹ Art. 302 (2), Labour Code.

¹¹² Art. 303, Labour Code.

¹¹³ Art. 304, Labour Code.

¹¹⁴ Art. 305 (1), Labour Code.

¹¹⁵ Art. 305 (2), Labour Code.

¹¹⁶ Art. 305 (3), Labour Code.

¹¹⁷ Art. 305 (4), Labour Code.

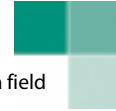
¹¹⁸ Art. 36.

¹¹⁹ Art. 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).

¹²⁰ Art. 55a.

¹²¹ Art. 55b.

¹²² Art. 222 (3), Labour Code.



Under the Employment Encouragement Act, single parents (adoptive parents) and mothers (adoptive mothers) of children not older than 5 years enjoy special treatment too. Employers who hire them are entitled to state subsidies for their employment for up to a year.¹²³

Vocational training institutions are also entitled to state subsidies for providing such workers with training where that is organised by the employer and the Employment Agency.¹²⁴

Under the Labour Code, nursing women are entitled to special protection. A nursing woman may refuse work that the government has determined poses a threat to her, or her baby's health.¹²⁵ Nursing women are further entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.¹²⁶ Where accommodation is impossible or unjustified, the employer is under a duty to do what is necessary to move the woman to another, appropriate job.¹²⁷ Until the employer provides the woman with accommodation or a different job, she is entitled to not do the inappropriate job and still receive one monthly salary.¹²⁸ Employers are under a duty to assign workplaces and jobs suitable for nursing women each year.¹²⁹ Further, an employer may not send a mother of a child not older than 3 years on a business trip without her written consent.¹³⁰ A mother of a child not older than 6 years is entitled to work from home.¹³¹ Her employer is under a duty to restore her to her former position when she stops working from home, and where that position has been made redundant, to another, appropriate position with her consent.¹³² Where the woman starts work from home for another employer, her employment with her former employer is not terminated but she is considered to be on unpaid leave. When she stops working from home, her employer is under a duty to restore her to her former job, or, where her former job was made redundant, to give her another appropriate job.¹³³ Where a mother is not in a position to avail herself of these rights, the father can exercise them.¹³⁴

¹²³ Art. 53-53a.

¹²⁴ Art. 53a (2).

¹²⁵ Art. 307 (2) and (3), Labour Code.

¹²⁶ Art. 309 (1), Labour Code.

¹²⁷ Ibid.

¹²⁸ Art. 309 (2), Labour Code.

¹²⁹ Art. 309 (4), Labour Code.

¹³⁰ Art. 310, Labour Code.

¹³¹ Art. 312 (1), Labour Code.

¹³² Art. 312 (2), Labour Code.

¹³³ Art. 312 (3), Labour Code.

¹³⁴ Art. 313, Labour Code.



4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

The Protection Against Discrimination Act permits the fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.¹³⁵ It further permits the fixing of maximum age requirements for recruitment linked to the training requirements of the post in question, or the need for a reasonable period of employment before retirement¹³⁶, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.¹³⁷

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

There are statutory state pension ages at which individuals become entitled to receipt of an old age pension. Age is not the only criterion for entitlement to pension. The number of years of service is taken into account too.¹³⁸ The relevant ages are different for women and men.¹³⁹ If an individual wishes to continue their employment after becoming entitled to a pension, they can do so, and collect their pension at the same time. There is no need to defer receipt of one's pension.

¹³⁵ Art. 7 (1.5). While this language is literally deficient from the standpoint of Art. 6 (1) of Directive 2000/78, which refers to differences in treatment being objectively *and reasonably* justified, if the means are *appropriate and necessary*, in essence it arguably complies with the requisite standard. If the test for *objective* justification is met, it is hard to see how a *reasonableness* test would not be. Similarly, if *necessity* is established, i.e. the lack of any better alternatives to achieve the aim pursued, it is difficult to imagine that the only means could be *inappropriate* (as long as the aim is legitimate). In other words, if justification is *objective*, i.e. not discretionary but universally sensible, *a fortiori* it is reasonable; and if a particular measure is the only way to achieve a legitimate aim, then it must be legitimate too, and *a fortiori* appropriate.

¹³⁶ Within the meaning of Article 6, para 1, subpara (c) of the Framework Directive (2000/78/EC) – an employer's need to use an employee long enough before this employee retires and leaves the employer.

¹³⁷ Art. 7 (1.6).

¹³⁸ Social Security Code, art. 68.

¹³⁹ Ibid. "(1) The right to a pension for length of service and age begins at the age of 60 years and 6 months for men, and 55 years and 6 months for women, provided that the sum of the length of service and age is no less than 98 for men and 88 for women.

(2) Starting December 31, 2000, the age required in paragraph 1 will increase by 6 months on the first day of each calendar year for both men and women, until it reaches 63 years for men and 60 years for women, and the required sum of the length of service and age will increase by 1 year until it reaches 100 for men and 90 for women.

(3) Starting December 31, 2004, the sum of the length of service and age for women required in paragraph 2 will increase by 1 year on the first day of each calendar year until it reaches 94.

(4) If the sum of the length of service and age is less than is required in paragraphs 1 - 3, the right to a pension is acquired after 15 years of service, of which 12 years of actual working experience, and 65 years of age, for both men and women."



- b) *Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

Workers, both women and men, become entitled to receipt of occupational pensions at 60.¹⁴⁰ As an exception, they can start collecting their occupational pensions 5 years earlier provided that this is provided for under a collective agreement.¹⁴¹ There is no need to defer one's occupational pension, as one can collect it and still work.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

In some sectors, such as the professional army,¹⁴² and the police,¹⁴³ the law imposes age limits after which people, both women and men, can no longer remain in service. However, there is no bar for them to find employment in another sector, and still collect their pension. There have been minor changes in the maximum ages for the army in recent years. No changes are currently on record to be planned.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The law does not permit employers to set retirement ages. Those ages are imperatively governed by legislation, namely the Social Security Code in the general case,¹⁴⁴ or special laws, such as those applicable to the police and army as mentioned above. The general legislative rule is that workers may be dismissed on the ground of age once they reach the applicable pensionable ages, which vary based on the particular number of years in service as mentioned above at (a).

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

Once a worker becomes entitled to retire, the employer becomes entitled to dismiss them on this ground only.¹⁴⁵ However, this does not affect any other rights to labour protection, including protection against unfair dismissal, which the worker retains as long as employed. Where the employee is dismissed because of having reached retirement age, this would not be unfair dismissal and there would be no compensation for it as such. The compensation discussed at (4.7.5.b) below is in essence a special social protection measure not implying fault rather than compensation in the strict sense of the word, as in indemnification for a tort.

For these above questions, please indicate whether the ages are different for women and men.'

¹⁴⁰ Social Security Code, art. 243 (4).

¹⁴¹ Social Security Code, art. 243 (6).

¹⁴² Defence and Armed Forces of the Republic of Bulgaria Act, art. 127 (1). For soldiers, the limit is 49 years; that limit is raised for each higher rank, with 60 years as the limit for the highest ranking officers (ibid.).

¹⁴³ Ministry of Interior Act, art. 245 (1). The limit is 60 years.

¹⁴⁴ See above a). and footnote 137.

¹⁴⁵ Labour Code, art. 328.10.



4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

Under the Labour Code, the only criteria for selection for redundancy are lesser qualifications and worse work performance.¹⁴⁶ However, this barely matters because once employees become entitled to retire, this in itself is a legal basis for an employer to dismiss them, even if there is no redundancy.¹⁴⁷

- b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*

Under the Labour Code, workers who are dismissed after having become entitled to retire, regardless of the basis for their dismissal, are entitled to compensation in the amount of 2 monthly salaries, and if they have worked with the employer for the last ten years, that compensation is in the amount of 6 monthly salaries.¹⁴⁸ This is preferential treatment compared to other workers who are made redundant prior to having become entitled to a pension. Those latter are only entitled to no more than one month's salary in compensation.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

The Protection Against Discrimination Act provides for no exception within the meaning of Article 2(5) of the Framework Directive.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

Under the Protection Against Discrimination Act, the following additional exceptions are provided for:

- different treatment on grounds of sex with respect to an occupation carried out in a religious organisation where, by reason of the nature of that occupation, or of the conditions it is carried out in, sex is an essential and determining professional requirement in view of the nature of the organisation, where the aim is legitimate and the requirement does not exceed what is necessary to achieve it;¹⁴⁹
- different treatment of persons on grounds of religion/faith or sex in religious education or training, including training or education for the purposes of carrying out an occupation in a religious-ethos institution;¹⁵⁰
- special protection measures for pregnant women and mothers that are provided for by law;¹⁵¹

¹⁴⁶ Art. 329 (1).

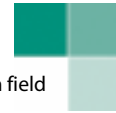
¹⁴⁷ Labour Code, art. 328.10.

¹⁴⁸ Art. 222 (3).

¹⁴⁹ Art. 7 (1.3).

¹⁵⁰ Art. 7 (1.4).

¹⁵¹ Art. 7 (1.7).



- different treatment of persons with disabilities in training or education aimed at meeting their special educational needs in order to equalise their opportunities;¹⁵²
- measures in training or education aimed at guaranteeing proportionate participation by women and men, as far as and as long as such measures are necessary;¹⁵³
- special measures for the benefit of disadvantaged persons or groups aimed at equalising their opportunities, as far as and as long as such measures are necessary;¹⁵⁴
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;¹⁵⁵
- measures aimed at protecting the distinctive identity of persons belonging to ethnic, religious and linguistic minorities, and their rights, alone or with other members of their groups, to preserve and develop their culture, to profess and exercise their religion, and to use their language;¹⁵⁶
- measures in training or education aimed at guaranteeing the participation of persons belonging to ethnic minorities, as far as and as long as such measures are necessary.¹⁵⁷

¹⁵² Art. 7 (1.10).

¹⁵³ Art. 7 (1.12).

¹⁵⁴ Art. 7 (1.13).

¹⁵⁵ Art. 7 (1.14).

¹⁵⁶ Art. 7 (1.15).

¹⁵⁷ Art. 7 (1.16).



5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic*

The Protection Against Discrimination Act not only authorises but mandates positive measures to equalise opportunities for disadvantaged groups. The Act provides for several specific exceptions for positive action, namely: different treatment of persons with disabilities in training or education aimed at equalising their opportunities;¹⁵⁸ measures in training or education aimed at guaranteeing proportionate participation by women and men, as far as and as long as such measures are necessary;¹⁵⁹ special measures for the benefit of disadvantaged persons or groups aimed at equalising their opportunities, as far as and as long as such measures are necessary;¹⁶⁰ special protection measures for pregnant women and mothers that are provided for by law;¹⁶¹ special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;¹⁶² measures aimed at protecting the distinctive identity of persons belonging to ethnic, religious and linguistic minorities, and their rights, alone or with other members of their groups, to preserve and develop their culture, to profess and exercise their religion, and to use their language;¹⁶³ and measures in training or education aimed at guaranteeing the participation of persons belonging to ethnic minorities, as far as and as long as such measures are necessary.¹⁶⁴ Further, the Act places a duty on all authorities to take measures to equalise opportunities for disadvantaged groups, as well as to guarantee participation by ethnic minorities in education, whenever necessary to accomplish the objectives of the Act.¹⁶⁵ The Act requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.¹⁶⁶

Under the Constitution, however, the position is different. The Constitutional Court has held that preferential treatment on constitutionally protected grounds, including race/ethnicity, sex, and religion/belief is unconstitutional.¹⁶⁷ By contrast, preferential measures based on other grounds, excluded from the constitutional equality clause, such as disability or age, are constitutional.¹⁶⁸ There is a conflict, therefore, between the Constitution and the Protection Against Discrimination Act insofar as authorisation for positive measures is concerned. The conflict may, however, be nominal. There are a number of positive policy measures for the benefit of ethnic groups, in particular, Roma, as well as sex quotas, which haven't been challenged over a number of years based on the constitutional case law. If a challenge were to be brought before the Constitutional Court, it might well revise its earlier position about the unconstitutionality of positive action and declare positive measures on grounds of sex, religion or ethnicity compatible with the Constitution.

¹⁵⁸ Art. 7 (1.10).

¹⁵⁹ Art. 7 (1.12).

¹⁶⁰ Art. 7 (1.13).

¹⁶¹ Art. 7 (1.7).

¹⁶² Art. 7 (1.14).

¹⁶³ Art. 7 (1.15).

¹⁶⁴ Art. 7 (1.16).

¹⁶⁵ Art. 11 (1).

¹⁶⁶ Art. 11 (2).

¹⁶⁷ Constitutional Court ruling N 14 of 1992.

¹⁶⁸ Ibid.



- b) *Do measures of positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market, any related to Roma and regarding minority rights based measures.*

Under the Labour Code, employers with more than 50 employees are under a duty to set aside 4-10 % of all their workplaces for people with disabilities each year.¹⁶⁹ Under the Integration of Persons with Disabilities Act, at least half of those workplaces are to be reserved for people with permanent disabilities.¹⁷⁰

Since 2001, in the pre-accession context, different governmental agencies have developed a number of policy documents addressing disadvantages of different groups, including ethnic minorities, women, people with disabilities, children and young people. Their major purpose was to serve as evidence of government action in response to the EC concerns expressed in the progress reports. Many policies and measures envisaged by these documents are formulated in a rather general way with no obvious link to any mechanism of implementation and institutional involvement. Their status as positive action therefore remains unclear.

Positive action measures for people with disabilities, children at risk and Roma were envisaged in the Joint Memorandum on Social Inclusion between Bulgaria and the EU, signed in February 2005 by the then Minister of Labor and Social Policy Hristina Hristova and Commissioner Vladimir Spidla.¹⁷¹ More specifically the Joint Memorandum envisages:

- Promoting the employment of persons with disabilities through programs, stimulating employers to hire persons with disabilities;
- Popularizing alternative forms of social services in the community for persons with disabilities;
- Developing alternative services for children at risk and their families in the community;
- Ensuring access of Roma to the labor market.

In 2005, soon after the formation of the current cabinet, the Ministry of Labor and Social Policy developed its program for the period 2005-2009.¹⁷² This is the major policy document in the sphere of social inclusion, which remained operative in 2007. One of its priorities (No.7) is called “*Guaranteeing equal opportunities, prevention and elimination of discrimination on the ground of sex, age, disability, ethnic belonging etc.*” The program envisages “developing an institutional framework for equal opportunities”, as well as national plans for promoting equal opportunities between men and women and for people with disabilities. The program envisages also developing an extensive system of monitoring “the state and the tendencies with regard to equality”.

¹⁶⁹ Art. 315 (1).

¹⁷⁰ Art. 27.

¹⁷¹ Available at: http://www.socialinclusion-bg.net/documents/sibg/bg/Jim_Bulgaria.pdf.

¹⁷² Available at: <http://www.mlsp.government.bg/bg/docs/Programa-MLSP-sait.doc>.



The *National Strategy for the Child 2008-2018*,¹⁷³ adopted by Parliament on 31 January 2008, envisages a series of measures aiming at general reform of child care and protection of the right of the child in this period, some of which include positive measures. The latter are measures of broad social policy targeted at what the program identifies as “children at risk” (children who live in poverty or in state institutions, victims or perpetrators of crime and violence, street children and children-victims of exploitation). Positive measures include:

- Alleviation of poverty and social exclusion through social assistance of single-parent families and families with disabled members;
- Prevention of institutionalization of children from ethnic minorities and those with developmental disabilities by developing foster care, improving diagnostic criteria for placement in remedial schools, social and psychological counseling of families, as well as other services in the community and making the environment in the schools of general education more inclusive. The system of monitoring indicators of the *National Strategy for Demographic Development 2006-2020* envisages a separate set of indicators for monitoring the situation of children in institutions;
- Improving the access and the quality of child health care through expanding the scope of preventive health care, ensuring that all children have access to a GP, improving the access of health care services for children at risk, different government-sponsored measures for promotion of health in the poor communities;
- Access to quality education for children from ethnic minorities through their government-sponsored enrolment in integrated schools, expanding free pre-school to include the enrolment of all children in risk from three years of age onwards, additional Bulgarian-language education for children from ethnic minorities;
- Secondary enrollment of children who dropped out of school through developing of informal schooling, ensuring free transportation and stipends, psycho-social counseling;
- Creation of a special unit for combating discrimination against children in the Protection against Discrimination Commission.

Positive action measures for people with disabilities have been developed in a number of legislative and policy documents at central and local government levels. Two of the major documents of the central government for 2007 were the *Action Plan for Equal Opportunities for People with Disabilities 2006-2007*¹⁷⁴ and the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*.¹⁷⁵ Another policy document providing for a general framework for inclusion of persons with disabilities in employment is the *Employment Strategy 2004-2010*,¹⁷⁶ which considers persons with disabilities as one of the three “disadvantaged groups” (along with ethnic minorities and women) at the labor market and thus in need of measures “to eliminate apparent disparities and to increase the chances for employment and remuneration”.

The 2006-2007 Action Plan and the National Plan for Integration of Children with Special Needs envisage the following positive action measures to be undertaken by different government institutions for persons with disabilities:

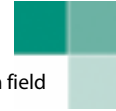
¹⁷³ Available at: <http://lex.bg/laws/ldoc.php?IDNA=2135579275>.

¹⁷⁴ Available at: www.mlsp.government.bg/bg/docs/program/plan.doc.

¹⁷⁵ Available at:

http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/documents/strategies/plan_spec_potrebosti.pdf.

¹⁷⁶ Available at: http://www.mlsp.government.bg/bg/docs/strategy/employment_strategy.htm.



Employment policy measures:

- a) Vocational training;
- b) Government-sponsored subsidized employment;
- c) Subsidizing transportation from home to work;
- d) Assistance in developing disabled persons' own businesses.

Social policy measures:

- a) Uncovering and supporting talented children with disabilities;
- b) Supporting sports events for people with disabilities.
- c) Ensuring parking lots;
- d) Deinstitutionalization of remedial education for children with developmental disabilities and integrating it into the mainstream education;
- e) Improvement of the quality of life in the institutions for children with disabilities.

The 2006-2007 Action Plan envisages developing a comprehensive system of monitoring of the socio-economic and health status of persons with permanent disabilities.

The *National Program for Integration of Refugees in Bulgaria 2005-2007*¹⁷⁷ envisages some positive action measures aimed at integration of recognized refugees in Bulgarian society. These include measures in the following spheres:

- Housing – Implementing projects for financial assistance of municipalities for construction or renovation of housing for refugees; information services for refugees in the sphere of housing rights.
- Employment – Vocational training; support in developing small businesses; training of labor bureaux officials for work with refugees.
- Education – Bulgarian-language courses and social orientation training for refugees; training of teachers working with refugee children; introduction of resource teachers in classes with concentrations of refugee students.
- Social assistance – Development of programs for individualized social work with refugees; introduction of mediators for interaction with refugees in the work of social assistance agencies; training of social workers to work with refugees.
- Health care – Training of GPs for work with refugees; introduction of mediators for interaction with refugees in the work of health care providers.
- Programs for refugees with special needs – Programs for refugees victims of torture and sexual violence, victims of trafficking, refugees of age and with disabilities.

The *National Program for Integration of Refugees in Bulgaria 2005-2007* envisages developing of a comprehensive system of monitoring of its effectiveness.

¹⁷⁷ Available at: www.aref.government.bg/docs/programa2005.DOC.



Programmes for positive measures regarding Roma fall into several key categories: 1) education; 2) housing; 3) healthcare; and 4) employment.

Education

Several key programmes and action plans provide for measures aimed at educational integration and advancement of Roma pre-school children and students, including the *Framework Programme for Equal Integration of Roma into Bulgarian Society* (1999), the *National Action Plan for the Decade of Roma Inclusion* (2005), Decree N 4 of the Council of Ministers of 11.01.2005 Creating a Centre for Educational Integration of Children and Students from Ethnic Minorities, and the *Strategy for Educational Integration of Children and Students from Ethnic Minorities* (2004). Measures provided for aim at: desegregating Roma children students in kindergartens and schools; bettering the material conditions in Roma schools; eliminating the practice of assigning Roma students to special schools; combating racial harassment in school; preventing Roma school dropout; teaching Roma language and culture in school; developing intercultural curricula; enabling Roma access to university education.

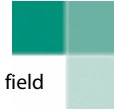
Housing

Measures are provided for under the Framework Programme for Equal Integration of Roma into Bulgarian Society, the National Action Plan for the Decade of Roma Inclusion and the National Programme for Improving the Housing Conditions for Roma in Bulgaria (2004) (including the 2007-2008 Action Plan for its implementation). Measures are aimed at: urban planning and regulation in Roma populated areas, including legalization of existing housing; improving the social and technical infrastructure, and the housing; planning for new housing construction lots; construction of new social housing and infrastructure. However, as the European Committee of Social Rights found in its decision in the case of *European Roma Rights Centre v Bulgaria* positive action programmes have not succeeded in alleviating the dire housing situation of Roma.¹⁷⁸

Healthcare

Measures are provided for under the *2005-2007 Action Plan on the Health Strategy for Persons Belonging to Ethnic Minorities*, and include: targeted registration and monitoring of pregnancies, and gynecologic checks and consultations, including by mobile medical teams, in order to reduce infant mortality; reducing teen pregnancies and interfamily marriages by dissemination of information and consultations in order to reduce mother mortality; information campaigns and immunizations to limit the spread of infectious diseases; targeted examinations for early diagnosis of lethal and disabling diseases; enhancing the accessibility of health services by establishing the figure of a health mediator, locating practices nearer to Roma populated areas, and purchasing of off road vehicles for ambulances; dissemination of information on patients' rights and prophylactics; intercultural communications skills training for medical personnel; legislative amendments to allow for inclusion of socially disadvantaged Roma in health security schemes.

¹⁷⁸ Decision of 18 October 2006, available at http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC31Merits_en.pdf. The Committee found Bulgaria in breach of Roma rights to adequate housing under the European Social Charter Revised.



Employment

Measures provided for under the *Action Plan for Implementation of the National Programme for Improving the Housing Conditions for Roma in Bulgaria 2007-2008* include providing targeted loans for establishing small businesses and setting up consultation Centers for Professional Preparation. The *National Action Plan for the Decade of Roma Inclusion* provides for: vocational training and retraining for Roma; training in entrepreneurship; training in business management; vocational guidance services; support for the setting up of small businesses, family farms, and pilot cooperatives by Roma; monetary incentives for employers to hire and retain Roma. The *Framework Programme for Equal Integration of Roma into Bulgarian Society* broadly provides for programmes and funds to ensure access to vocational training, employment and business loans for Roma.

In 2004, there was a debate on positive action with respect to a draft law introduced by government to set up a fund for desegregation of Roma schools. Parliament failed to enact that bill because of arguments that it provided for ‘positive discrimination’ against ethnic Bulgarian students. Subsequently, the government passed secondary legislation to establish such a mechanism that still exists. The debate is no longer current.

In 2006, the equality body initiated *ex officio* proceedings to inquire into the ethnic makeup of the governing body of the public water supply company in the northeastern city of Dobrich. It declared that the governing body’s composition did not reflect the shares of minorities in the population of the region. The equality body found that this situation amounted to a breach of the employer’s duty under the Protection Against Discrimination Act to encourage participation by under-represented ethnic groups. It issued a binding instruction on the company to take effective measures to encourage participation by ethnic minorities in the company’s governance. The equality body further issued an instruction to the Minister of Regional Development and Public Works to adopt rules against discrimination to govern internally all public companies, and to take effective measures in all public companies to encourage persons from under-represented ethnic minorities to apply for managerial posts.



6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

The Protection Against Discrimination Act provides for two alternative procedures for enforcement of anti-discrimination rights: judicial proceedings before the general civil courts and specialised quasi-judicial proceedings before the independent equality body. A victim can choose between the two. The courts can make a declaration of discrimination and award compensation for damages, as well as order respondent to take remedial action, or to abstain from, or to terminate particular action or inaction found to be in breach of the law. The equality body, too, can make a finding of discrimination, and order preventive or remedial action. It can also impose financial sanctions.¹⁷⁹ However, it can award no compensation to a victim.

- b) *Are these binding or non-binding?*

Both the judicial and the specialised quasi-judicial remedy are legally binding.

- c) *Can a person bring a case after the employment relationship has ended?*

The ending of an employment relationship makes no difference to bringing a claim. The only limitation is the rule on prescription. For the judicial remedy, the prescription period is 5 years,¹⁸⁰ and for the equality body, three years¹⁸¹.

In relation to each, please note whether there are different procedures for employment in the private and public sectors.

Both procedures are universally applicable to both the public and private sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

Under the law, litigants are free to represent themselves in both the judicial and quasi-judicial procedures.¹⁸² However, in practice, litigants without a lawyer would be at a disadvantage in court where proceedings are complicated and formal. Before the equality body, which has quasi-investigative powers and whose proceedings are more informal and victim-friendly, complainants are not that dependent on a lawyer. On the other hand, the equality body is located in the capital, which poses a geographical barrier for some.

¹⁷⁹ The maximum amount of sanction imposable on an individual for an act of discrimination is the equivalent of EURO 1000. For legal persons this is EURO 1250. For a repeated offence, the sanction is automatically double. For a failure to abide by a decision of the equality body, the maximum sanction is EURO 5000. Where such a failure continues for more than three months after the decision imposing this sanction entered into force, the next sanction is up to EURO 10 000.

¹⁸⁰ Protection Against Discrimination Act, art.

¹⁸¹ Protection Against Discrimination Act, art. 52 (1).

¹⁸² For supreme court proceedings, both administrative (or judicial review) and civil, appellants only need to have a lawyer or *juris consult* to countersign their cassation appeal (art. 284 (2) of the Civil Procedure Code and art. 18 (1) of the Administrative Procedure Code) but the law does not require them to be represented at hearings.



On a positive note, both the court and equality body procedures are completely exempt from costs, both state fees and expenses.¹⁸³

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

There are no comprehensive official statistics on discrimination cases. For discrimination cases in court, there are no official statistics at all. According to unofficial estimates, all in all, cases on all grounds, including but not limited to the five grounds protected under the Race and Framework Directives, may be around 150 since 2004. As for the equality body's cases, according to data provided by it, it instituted 200 cases in 2006 in total for all grounds, and 315 in 2007, again, in total for all grounds.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

- a) *in support of a complainant*
- b) *on behalf of one or more complaints (please indicate if class actions are possible)*

Under the Protection Against Discrimination Act, public interest NGOs and trade unions may represent complainants, for which they need the complainant's consent.¹⁸⁴ They can also join proceedings brought by a victim in their support, for which they don't formally need the complainant's consent.¹⁸⁵ Class actions are possible and NGOs and trade unions can intervene in their support too.¹⁸⁶ They can, further, initiate proceedings themselves without an individual complainant where the rights of many parties are affected.¹⁸⁷ Trade unions and public interest NGOs can also join such *actio popularis* proceedings brought by other associations in *amicus curiae* capacity.

Under the Protection Against Discrimination Act, any entity or individual may bring proceedings before the equality body without claiming victim status.¹⁸⁸ Therefore, any one may initiate a case on behalf or in support of a particular victim, or in the public interest.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The Protection Against Discrimination Act requires the burden of proof to be shifted from the claimant onto the respondent where claimant has established facts from which discrimination can be inferred.¹⁸⁹ This rule is applicable to both judicial proceedings and proceedings before the equality body. It is uniformly applicable to all forms of discrimination, including harassment and victimisation.

¹⁸³ Protection Against Discrimination Act, art. 53 and art. 75 (2).

¹⁸⁴ Art. 71 (2).

¹⁸⁵ Ibid. In practice, however, if the complainant and NGO are not in coordination, it would be difficult as a rule for the NGO to learn about the case in order to file a motion to join it.

¹⁸⁶ Protection Against Discrimination Act, art. 72.

¹⁸⁷ Art. 72 (3).

¹⁸⁸ Art. 50.3.

¹⁸⁹ Art. 9.



The law is not clear whether the shifting burden of proof applies also to cases of reasonable accommodation denial. A denial of reasonable accommodation is not declared under the law to constitute discrimination. However, reasonable accommodation is governed by the Protection Against Discrimination Act, and the Act stipulates that the shifting burden of proof applies “in proceedings for protection against discrimination”. Arguably, it should also apply to reasonable accommodation cases. Future case law will show how judges will construe this. The law does not specify any criteria to determine what are “facts from which discrimination can be presumed”. This is left to judges to decide in particular cases.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, ➔ or person that help the victim of discrimination to present a complaint)

The Protection Against Discrimination Act expressly prohibits victimisation as a form of discrimination.¹⁹⁰ Victimisation is defined as: a.) less favourable treatment of a person who has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; b.) less favourable treatment of a person where a person associated with them has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; c.) less favourable treatment of a person who refused to discriminate.¹⁹¹ Therefore, protection is accorded for victimisation by presumption and by association too. Action for protection against discrimination may include, but is not limited to, bringing proceedings before the equality body or the court, in either victim or third-party capacity, or testifying in proceedings.¹⁹² Therefore, any person who assisted any action against discrimination in any way is entitled to protection from victimisation.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

Under the Protection Against Discrimination Act, the equality body has powers to impose financial sanctions between the equivalents of EURO 125 and 1250.¹⁹³ These sanctions are administrative fines and are not awarded to the victim as compensation but go to the state budget. Where a breach is repeated, the sanction is double.¹⁹⁴ Those sanctions are uniformly applicable to all sectors and fields, including the private and public ones, as well as fields outside employment. The equality body can, further, order particular remedial action by discriminators, and suspend the execution of employers' decisions where those may result in discrimination.¹⁹⁵ Under national law, the civil courts do not impose fines. They only award compensation for damages.

¹⁹⁰ Art. 5.

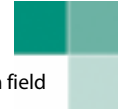
¹⁹¹ § 1.3 Additional Provision.

¹⁹² Ibid.

¹⁹³ Art. 78-80.

¹⁹⁴ Art. 81.

¹⁹⁵ Art. 76, Protection Against Discrimination Act.



b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

There is no maximum amount of compensation.¹⁹⁶ The courts can award any amount that is fair.

c) *Is there any information available concerning:*

- *the average amount of compensation available to victims*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?*

There is no official data concerning the average amount of compensation ordered in discrimination cases. According to unofficial estimates, the average amount of compensation for non-pecuniary damages in such cases is currently ca the equivalent of EURO 250 per person. In exceptional cases, the courts have awarded as much as the equivalent of EURO 1500-2500.

It is unclear to what extent monetary and other sanctions imposed by the equality body are complied with. While the amounts themselves under the law are capable of deterrence, this may be compromised by ineffective forced implementation.

¹⁹⁶ This concerns indemnification of a victim's pecuniary or non-pecuniary damages whatever those might be in the particular case, and not financial punishment by the state by decision of the equality body.



7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?*

Under the Protection Against Discrimination Act, the Protection Against Discrimination Commission is charged with promoting and enforcing non-discrimination as a specialised equality body.¹⁹⁷

- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The Protection Against Discrimination Commission is declared independent under the law.¹⁹⁸ Its nine members are selected in part by Parliament (5) and in part by the President (4). Their term of office is 5 years. The budget of the Protection Against Discrimination Commission is approved by Parliament directly.¹⁹⁹ The Protection Against Discrimination Commission is accountable to Parliament only. It reports to Parliament annually.²⁰⁰

- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

The Protection Against Discrimination Commission deals with discrimination on all protected grounds. It focuses on discrimination and equality, and does not deal with other human rights. The Protection Against Discrimination Commission has mandate to: hear complaints by victims and communications by third parties; find discrimination by legally binding decisions; impose financial sanctions; issue mandatory instructions for remedial or preventative redress.²⁰¹ It can initiate its own proceedings at its discretion, in all fields and on all grounds, against any perpetrator.²⁰² It can review and give opinions on draft legislation.²⁰³

¹⁹⁷ Art. 40.

¹⁹⁸ Ibid.

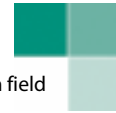
¹⁹⁹ Art. 40 (3), Protection Against Discrimination Act.

²⁰⁰ Art. 40 (5), Protection Against Discrimination Act.

²⁰¹ Protection Against Discrimination Act, art. 47.

²⁰² Ibid.

²⁰³ Ibid.



- d) *Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*

The Protection Against Discrimination Commission is, further, charged with assisting victims of discrimination,²⁰⁴ carrying out independent research and publishing independent reports.²⁰⁵ It can also make recommendations to public authorities, including for legislative change.²⁰⁶

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The Protection Against Discrimination Commission has standing to bring lawsuits in court, both civil ones and judicial review ones.²⁰⁷ It also has standing to intervene in court proceedings as an interested party.²⁰⁸

- f) *Is the work undertaken independently?*

Under the Protection Against Discrimination Act, the Protection Against Discrimination Commission is expressly declared to carry out its functions independently.²⁰⁹ However, considering its members selection by Parliament and the President, it might not be free from political dependencies.

- g) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

The Protection Against Discrimination Commission has not made the problems of Roma its priority. It has no approach of strategic prioritizing but instead attempts to deal with all grounds and issues of discrimination in a neutral way. The Commission deals with discrimination complaints on behalf of Roma and others on a first-come, first-served basis, making no distinction between complaints in terms of strategic importance. In terms of action taken on its own motion, the body has not accorded any outstanding attention to anti-Roma discrimination.

²⁰⁴ There is no public or institutional perception of a clash between the body's adjudicator functions and its victim's assistance mandate, and no debate. In practice, the assistance mandate is depressed; the body gives victims no assistance other than to explain to them how the procedure works and what they are expected to do in order to participate. In the framework of a one-off awareness raising campaign, the body gave ad hoc public consultations in the major cities, advising individuals on their complaints (the exact extent of this advising is unclear). It has initiated no court action to date.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Art. 40 and 47.



8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The information action taken by the state has been limited. Only two bodies have taken such action – the Protection Against Discrimination Commission and the National Council for Cooperation on Ethnic and Demographic Issues within the Council of Ministers, and it has consisted in superficial and insufficient general awareness raising measures. The Protection Against Discrimination Commission has broadcast advertisements on the radio and television, and disseminated advertising brochures at seminars and the like; its members have given interviews to the media, and carried out seminars in various cities. The National Council for Cooperation on Ethnic and Demographic Issues has organised several regional conferences, published brochures, and distributed a survey questionnaire. There has been no community outreach. The media used have been those mainstream ones that may be inaccessible to isolated communities, such as Roma and people with sensor impairments, and the groups targeted by seminars and the like have been predominantly people from the mainstream, like public officials, journalists and establishment-connected NGOs.

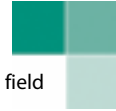
In addition, the “Demographic Policy and Equal Opportunities” Directorate within the Ministry of Labour and Social Policy, designated the National Implementing Body for the European Year of Equal Opportunities For All – 2007 (the Year) has, according to official sources, done some awareness-raising in cooperation with the Protection Against Discrimination Commission, the National Council for Ethnic and Demographic Issues, and selected establishment-linked NGOs. All in all, the Year failed to gain any meaningful visibility. According to official sources, this directorate has set up a “Consultation Council” to “inform society about the antidiscrimination activities of the state”. Again, this has had no visibility, with even experts and NGOs significantly relevant in the field of antidiscrimination being unaware of the existence of such a Council.

Further, according to government sources, the Ministry of Labour and Social Policy and the Protection Against Discrimination Commission have signed an agreement to carry out a “nation-wide information campaign” on equal pay for women and men. This agreement or the results of it have no visibility.

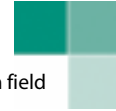
- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

The Ombudsman has initiated in 2008 an “expert council” on discrimination with selected NGOs.²¹⁰ This council has yet no clear mandate and is not likely to be able to directly shape policy or law because the Ombudsman has no binding powers under the Ombudsman Act. The Protection Against Discrimination Commission, which does have binding powers to enforce and evolve equality, has not involved NGOs in cooperation or dialogue in any

²¹⁰ The Ombudsman advocates where citizens’ rights and freedoms are breached by the state or municipal government, or by persons appointed to provide public services (art. 2 of the Ombudsman Act). The Ombudsman’s lawful means of advocacy are to investigate complaints, make suggestions and recommendations to public bodies, and mediate between affected parties and institutions (art. 19 of the Ombudsman Act). This office makes no binding decisions.



constructive or meaningful way. It has engaged in selective contacts with some NGOs on a non-transparent basis, excluding others. It has been difficult and slow with NGOs in terms of providing them with access to its rulings and to statistical data about its cases. There is no open mechanism for NGOs to provide the Protection Against Discrimination Commission with their input on the law or practice. The Protection Against Discrimination Commission has not engaged important, if any, NGOs in consultations regarding amendments to the legislation it has reported to be planning to initiate in 2008.



- c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

The Protection Against Discrimination Commission has signed a partnership agreement with one of the two principal trade unions. However, it is unclear what specific action that agreement is about, or whether it includes promoting dialogue with employers aimed at ensuring equality at the workplace. No action aimed at such dialogue has been reported. Other state bodies, apart from the Protection Against Discrimination Commission, are not on record to have taken any action to promote pro-equality dialogue between the social partners.

- d) *to specifically address Roma and Travellers*

The state is not on record to have taken any action targeted at Roma communities in terms of disseminating information or promoting pro-equality dialogue with the social partners. According to official sources, a Council for Roma Integration within the Ministry of Labour and Social Policy exists since 2006. The main objective of this Council is said to be support and consult the National Roma Decade Coordinator, meeting every 3 months. It is said to include 29 representatives of Roma NGOs. The existence, activities or results of this body are not visible.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

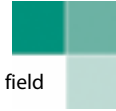
- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

While, under general legal principles, the Protection Against Discrimination Act as *lex specialis* should override general, or older, or secondary legislation that conflicts with it, in practice there is no specific mechanism to ensure that any such norms are set aside, other than litigation before the courts or the equality body. As for striking down conflicting norms under secondary legislation, the only remedy is judicial review proceedings before the Supreme Administrative Court. And as for conflicting primary legislation, there is no remedy, except proceedings before the Constitutional Court, where those norms arguably also conflict with the Constitution or international law, apart from the Protection Against Discrimination Act. However, standing for bringing such proceedings is restricted to certain official bodies, excluding the equality body, with no individual petition.

- b) *Are any laws, regulations or rules contrary to the principle of equality still in force?*

There are quite a large number of rules in primary and secondary legislation still operative that contradict the Protection Against Discrimination Act.²¹¹ A major effort is required to

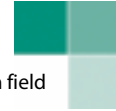
²¹¹ For instance, to list just some examples of directly discriminatory legislation, Judiciary Act (mental disability bar, art. 162); Academic Degrees and Academic Titles Act (age bars, art. 9); Higher Education Act (unfettered discretion for universities to differentiate on grounds of age, race and sex, inter alia, art. 4); Defence and Armed Forces Act (age bars to



ensure that all laws and regulations are brought into conformity with the principle of equality.²¹²

employment, art. 116, 127, 141-142); Ministry of the Interior Act (age and health bars to employment, art. 179); Diplomatic Service Act (mental disability bar, art. 27); Classified Information Protection Act (mental disability bar, art. 40); Access and Disclosure of Documents and Declaration of Affiliation of Bulgarian Nationals with State Security [...] Act (mental disability bar to access to employment, art. 6); Ordinance N 7 of 1993 on Noxious and Hard Jobs Forbidden for Women (sex bars to employment); Ordinance N 7 of 1993 on Admission of Students into the National Lyceum For Ancient Languages and Cultures (sex quotas); etc. Norms which discriminate indirectly would be far more numerous and time-consuming to identify.

²¹² First, the whole body of legislation, including statutory law and secondary legislation, which is of course quite voluminous, should be reviewed and analysed for incompatibilities with the Protection Against Discrimination Act. Second, careful thinking should be done to devise ways to harmonise conflicting norms with the Protection Against Discrimination Act. This in high probability will not only require conflicting norms to be amended or repealed, but also the Act to be revised in order to allow for additional legitimate exceptions.



9. OVERVIEW

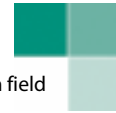
This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

- The protection that the Protection Against Discrimination Act affords may present real problems in practice because the list of grounds is open-ended, and the material scope is universal, while the exceptions are express and exhaustive with no general justification for direct discrimination. While this may be workable to a certain extent in respect of the core six grounds (race/ethnicity, sex, sexual orientation, religion/belief, disability and age), for other grounds, such as property status, or education, it decidedly is not defensible. In practice, courts will have to make formally unlawful decisions in order to dismiss unreasonable claims, for which no exception will be available under the law. Judges will have to create some device whereby to deal with frivolous complaints of legitimate differential treatment on grounds, such as place of residence, for instance, or preferred train destination, or outfit of the moment. The better alternative is to amend the list of protected grounds closing it down to a selected number of essential grounds, and providing for a general justification possibility for some grounds, but not core grounds, such as sex, race, religion, or sexual orientation.²¹³
- Judges' and equality body members' understanding of the concept of protected grounds is inadequate. In some cases, judicial decisions have failed to even discuss and identify the ground of the alleged discrimination. There are cases in which the Supreme Administrative Court has found discrimination on appeal against equality body decisions without looking at all into the issue of the relevant ground, or at a comparison to others in comparable circumstances. The equality body treats "exercise of labour rights"²¹⁴ as a protected ground on a par with race, sex, disability, etc., conflating thereby the concept of protected ground with the field in which discrimination allegedly took place. The Supreme Administrative Court has also accepted "exercise of labour rights" as a protected ground in rulings reviewing equality body decisions. The equality body's lack of proper conceptualisation of the protected grounds has led it to find indirect disability discrimination instead of direct age discrimination, for instance, in a case where persons with a particular ailment older than 4 years were excluded by the government from access to medication subsidies as opposed to persons under 4 years of age who were entitled to such subsidies. Similarly, there is a lack of sufficient understanding of the concept of comparison. Both judges and equality body officials have failed to identify the proper comparator in a number of cases.
- Judges have consistently accepted nominally in their decisions that the Protection Against Discrimination Act is *lex specialis*. However, their approach in practice has been ridden with contradictions. In a number of cases, they have failed to accord that Act prevailing authority in cases where it was contradicted by other laws.

²¹³ For age and disability likewise one cannot but allow differentiation in fields, such as service provision, education, healthcare, social security, taxation, to name but of a few of all those that are covered by the Protection Against Discrimination Act's universal ban.

²¹⁴ Meaning situations of differentiation between people or adverse treatment in the context of employment, including access to employment and all its other aspects, regardless of the basis for the differentiation or adversity.



Indeed, the Supreme Court of Cassation who is competent to review equality body decisions adjudicating cases has held on at least two occasions that differential treatment under other laws is beyond the material scope of the Protection Against Discrimination Act and, therefore, the equality body has no competence to hear complaints against such treatment. Further, this Court has held in a case concerning higher hotel prices for non-nationals that the Tourism Act was *lex specialis* in the field *vis-a-vis* the Protection Against Discrimination Act and, therefore, the Protection Against Discrimination Commission was not competent to hear the case. The Consumers Protection Commission was competent instead to find a breach based on a non-discrimination clause under the Tourism Act. Such a position is incompatible with the aim of the Protection Against Discrimination Act to be the single law integrating all equality protection based on strong and uniform standards.

- The Supreme Administrative Court has consistently held that neither it, nor the equality body is competent to review substantive decisions by employers regarding the necessity of particular occupational requirements.²¹⁵ The Court has declared that employers have exclusive discretion to make such judgments. Such a position raises serious issues concerning effective enforcement of the ban on indirect discrimination which is conditional on judges inquiring into employers' reasons, as well as proper application of exceptions to the ban on direct discrimination, which, again, depends on judges reviewing the objective necessity of differential treatment, and not simply deferring to employers' discretion.
- Emerging case law by the Supreme Administrative Court has implicitly held that for discrimination to be at hand, it is necessary that the particular protected ground be the only, or definitive reason for the less favourable treatment. The Court has appeared unaware of the mixed reasons standard evolved by other jurisdictions, such as the UK and US, under which less favourable treatment is discrimination even if there were other reasons for it in addition to the protected ground, as long as the ground was an effective cause.
- Both the civil courts, and the Supreme Administrative Court have ruled a number of times that directly discriminatory advertisements for job vacancies, as well as for services, did not *per se* constitute discrimination insofar as no particular victim was established.²¹⁶
- A number of court and equality body decisions are quite arbitrary, refusing to find discrimination in blatant circumstances without any real reasons. For instance, the Supreme Administrative Court has refused to acknowledge that the provision of preferential mobile telephone services only to consumers aged between 14 and 26 constituted direct discrimination against other age groups.²¹⁷

²¹⁵ Inter alia, decision N 11352 of 19.11.2007 in case N 7975/2007. For more details, see footnote N 216 below.

²¹⁶ Inter alia, decision N 11352 of 19.11.2007 in case N 7975/2007, decision N 236 of 09.01.2008 in case N 8046/2007 and decision N 7997 of 26.07.2007 in case 6840/2006 of the Supreme Administrative Court. For more details, see footnote N 216 below.

²¹⁷ Decision N 236 of 09.01.2008 in case N 8046/2007.

Further, in a case where a job applicant was not admitted to apply because his diploma was from an Ukrainian university, this Court quite absurdly held that there was no discrimination because the complainant had not been subjected to discrimination within the meaning of the utterly inapplicable to the case Convention Against Discrimination in Education, in particular “[...] depriving any person or group of persons of access to education of any type or at any level; limiting any person or group of persons to education of an inferior standard; establishing or maintaining separate educational systems or institutions for persons or groups of persons; or (d) inflicting on any person or group of persons conditions which are incompatible with the dignity of man”.²¹⁸ In a case of sex-based redundancy where the employer had openly explained the decision with the complainant’s being a woman and, therefore, unable to do the work, this Court refused to even discuss this, while holding that there was no discrimination and overturning the positive decision by the equality body in the case.²¹⁹ Further, it held, that the exclusion of patients over 4 years of age from access to public reimbursement for a particular medication for asthma (as opposed to patients under 4 years) was not discrimination because the Health Insurance Fund had not committed an “action”, but rather an “inaction”, and that despite the clear provision of para 1.7 of the Additional Provision of the Protection Against Discrimination Act, which defines less favourable treatment as “any [...] action or inaction [...]”.²²⁰ In this same case, the equality body had as a first instance quite irrationally ruled that the exclusion amounted to indirect discrimination on grounds of disability without any analysis of disparate impact²²¹ – just one of many illustrations that the body does not differentiate properly between direct and indirect discrimination (see following bullet point), and fails to adequately identify protected grounds. The Supreme Administrative Court has refused to find any discrimination in cases where Romani power consumers were treated less favourably by power suppliers by being subjected to collective power cuts because of their neighbours’ debts, or by having their electric meters mounted at inaccessible heights preventing visual control allegedly to avoid theft and vandalism.²²² Some civil judges too have made such arbitrary refusals without even carrying out a comparison to determine whether there was less favourable treatment.²²³ Civil judges have refused to find discrimination in cases where banks have officially stipulated age bars to access to crediting.²²⁴ In one case, a civil judge refused to find discrimination where a prosecutor had explicitly motivated his decision not to propose a Lesbian prisoner for early release with her homosexuality.²²⁵ The above examples of irrationality are far from exhaustive.

- In some cases judges and equality body officials have directly misapplied the Protection Against Discrimination Act. For instance, the Protection Against Discrimination Commission erroneously found that less favourable treatment of Romani electricity consumers compared to their non-Romani counterparts constituted *indirect* discrimination.²²⁶

²¹⁸ Decision N 13369 of 27.12.2007 in case N 8081/2007.

²¹⁹ Decision N 11981 of 29.11.2007 in case N 7976/2007.

²²⁰ Decision N 13393 of 28.12.2007 in case N 8083/2007.

²²¹ Decision N 68 of 17.07.2007 in case N 115/2007.

²²² Respectively, decision N 7811 of 19.07.2007 in case N 1048/2007 and decision N 10899 of 07.11.2007 in case N 5/2007.

²²³ Inter alia, decision N 136 of the Plovdiv Regional Court in civil case N 1285/2006 and decision N 38 of 11.04.2006 in case N 3303/2005 of the Plovdiv District Court.

²²⁴ Inter alia, decision of 10.01.2007 of the Sofia District Court in civil case N 4037/2006; decision of 28.02.2007 of the Sofia District Court in civil case N 4035/2006.

²²⁵ Decision of the Sofia District Court in civil case N 1173/2007.

²²⁶ Decision N 58 of 29.11.2006 in case N 10/2006.



The power provider had subjected Romani consumers with no outstanding debts, as well as debtors, to regular power cuts as a collective sanctioning measure applied only in Romani settlements. By contrast, non-Romani regular payers are not affected in this way because only debtors' power is cut. Similarly, the equality body has found that power suppliers committed *indirect* discrimination by mounting Roma consumers' electric meters at inaccessible heights where non-Roma consumers suffered no such treatment, i.e. treatment was different on racial grounds.²²⁷ The body also found indirect discrimination in a case of explicitly sex-based redundancy.²²⁸

- A bad outcome of the equality body's fusing of direct and indirect discrimination has been that it has evolved an approach of justifying direct discrimination by a proportionality analysis in direct contravention to the law. For instance, the body held in direct contravention to the legal definitions that "[a] violation of the principle of equal treatment results from different treatment of equal cases without objective and reasonable justification."²²⁹ Similarly, the body refused to find discrimination against a prisoner because "the limitations [...] are compatible with a legitimate aim and do not exceed what is necessary to accomplish it".²³⁰ Further, the equality body has difficulties with the test for justification for exceptions. Thus, it found that an employer had not discriminated on grounds of age even though they had openly fixed a maximum-40 age requirement, reasoning contradictorily that, on the one hand, the age criterion was not determining (because one person was employed who was older than 40), and, on the other, that that criterion was justified because the employees needed to be trained for the job.²³¹ The body failed to substantiate its latter finding by any discussion of the actual necessity for the particular age bar; it accepted a mere declaration to that effect by the employer. The Supreme Administrative Court confirmed this flawed decision without any analysis of the actual necessity for the limitation.²³² What is more, the Court expressly reasoned that the employer had exclusive competence and discretion to set the requirements for the job, refusing thereby to exercise judicial review over those decisions, i.e. to assess their justifiability by proportionality. The Court also held, in direct contravention to the principle of the shifting burden of proof that the complainant had failed to rebut the respondent's assertion of necessity for the bar. In addition, it explicitly held that a job advertisement posing requirements based on protected grounds was not unlawful despite the clear provision of art. 12 (1) of the Protection Against Discrimination Act. The Supreme Administrative Court has repeatedly refused to assess the justifiability of job requirements, as well as of employers' decisions concerning redundancy, stating openly that those employers' choices were not subject to judicial review.²³³ This Court has gone so far as to hold that an employer's rating of applicants and choice of one rather than another was not subject to court control.²³⁴ In this case too, the Court failed to recognise that job advertisements per se constituted discrimination in direct contravention to the Protection Against Discrimination Act.²³⁵

²²⁷ Inter alia, decision N 44A of 16.10.2006 in case N 15/2006.

²²⁸ Decision N 56 of 21.06.2007 in case N 154/2006.

²²⁹ Decision N 68 of 17.07.2007 in case N 115/2006.

²³⁰ Decision N 7 of 07.02.2007 in case N 97/2006. Decisions N 58 of 21.06.2007 in case N 19/2007, N 35 of 27.04.2007 in case N 151/2006 and N 94 of 12.11.2007 in case N 140/2006 feature similar reasons.

²³¹ Decision N 20 of 28.03.2007 in case N 150/2007.

²³² Decision N 11352 of 19.11.2007 in case N 7975/2007.

²³³ Thus, respectively, decision N 181 of 08.01.2007 in case 10040/2006 and decision N 11981 of 29.11.2007 in case 7976/2007, *inter alia*.

²³⁴ Decision N 7997 of 26.07.2007 in case 6840/2006.

²³⁵ As in its decision N 236 of 09.01.2008 in case N 8046/2007.



Further, this Court has refused to accept that *nationality* is a protected ground in direct contravention to art. 4 (1) of the Protection Against discrimination Act.²³⁶ The Court has held disparate impact justified without even looking at the possible alternatives to the impugned means to achieve a legitimate aim in a case concerning a ban on horse-drive carts disproportionately affecting Roma people.²³⁷ The Court simply accepted respondent's blank assertion of necessity. It has repeatedly failed, like the equality body, to even discuss the ground on which discrimination allegedly took place, while accepting that it did.²³⁸

- It has also repeatedly failed to even look for a comparator, let alone actually make a comparison to establish a difference in treatment, in cases where it has found discrimination.²³⁹ The civil courts too have in some cases completely misinterpreted the concept of indirect discrimination and its relationship to direct discrimination. In an age case, the trial judge held obiter that “the only difference between the two forms of discrimination is whether the discriminatory treatment is openly motivated with [...] the [protected] grounds or this motive is hidden by an apparently neutral provision [...]”.²⁴⁰ The judge affirmed that “the criterion was whether the causal relationship [between the ground and the treatment] was hidden.” Judges too have found in cases of inaccessible electric meters for Romani consumers, as well as in a case of a refusal by the power provider to restore the supply after a breakdown affecting an entire residential section until all debtors had paid, that the discrimination was indirect.²⁴¹
- In other cases, adjudicators have refused to take account of widely known facts constituting the social context of cases, producing thereby unreasonable, dysfunctional decisions.²⁴² In particular, the Supreme Administrative Court's case law is riddled with failings in terms of the definitions of discrimination, as well as other issues. This Court has declared a number of times in direct contravention to the Protection Against Discrimination Act's definitions of discrimination that discrimination was by definition unequal treatment provided for by law, excluding thereby unequal treatment with no legal basis from the concept.²⁴³ On the other hand, this Court has contradictorily held that different treatment provided for under legislation, including even secondary legislation could not be discussed as discrimination. The case law in this respect is still painfully grappling with the issues.
- Trade unions have only taken, or supported cases of alleged discrimination on grounds of membership in a particular trade union. They have not taken any cases on other grounds, such as race, or disability, or sex.
- Judges have consistently noted the principle of the shifting burden of proof in their decisions. As a whole, their dicta about it are consistent with a proper construction of this norm.

²³⁶ Decision N 12961 of 21.12.2006 in case 5371/2006.

²³⁷ Decision N 12117 of 03.12.2007 in case 8044/2007.

²³⁸ Inter alia, decision N 13083 of 19.12.2007 in case 4510/2007.

²³⁹ Inter alia, decision N 13083 of 19.12.2007 in case 4510/2007; decision N 11421 of 19.11.2007 in case 5604/2007.

²⁴⁰ Decision of 28.02.2007 of the Sofia District Court in civil case N 4035/2006.

²⁴¹ Respectively, inter alia, decision of 10.01.2007 of the Sofia District Court in civil case N 2751/2006; decision of 19.08.2004 of the Sofia District Court in civil case N 1262/2004.

²⁴² For instance, decision of 30.11.2006 of the Sofia District Court in civil case N 1014/2006 in which the court refused to accept that it was established that MP and *Ataka* party leader Volen Siderov had made a particular hate speech in Parliament and on the national TV despite the notoriety of the event and, in addition, evidence from the official website of Parliament and witness testimony.

²⁴³ Inter alia, decision N 10743 of 05.11.2007 in case 7079/2007; decision N 7452 of 11.07.2007 in case 3633/2007; decision N 236 of 09.01.2008 in case 8046/2007.



However, they have very rarely applied this principle to the facts of cases in a manner consistent with its purpose. In many cases, the judges have declared that a *prima facie* case had been made out where in fact claimant had established all elements of discrimination beyond a reasonable doubt. It has been in exceptional cases only that judges have actually found discrimination based solely on respondent's failure to rebut an inference of discrimination. Further, judges do not appear to properly comprehend the onus on respondent to disprove a *prima facie* case. In a number of cases, they have ruled that respondent is required to prove a "negative fact", i.e. that they have not discriminated, instead of expecting them to prove a legitimate reason for the treatment that had nothing to do with the protected ground, which is a positive fact. The extent to which judges truly appreciate the meaning and implications of the shifting burden of proof is not at all clear yet.

- In one case, the Sofia trial court ruled that the shifting burden of proof did not apply to *actio popularis* cases taken by NGOs or trade unions as it was only meant to alleviate victims of discrimination, and not organisations such as these that had considerably more resources compared to victims.²⁴⁴ Such a restrictive position if taken up by other judges has significant potential to hamper the effectiveness of the law.
- The position of the equality body on preliminary references to ECJ has been that it is no "tribunal" for purposes of making such references, and, therefore, has no standing. Such a position may not be compatible with ECJ standards on what constitutes a "tribunal" in this sense, and will not further the effectiveness of the legislation.
- NGOs' standing under the Protection Against Discrimination Act to bring public interest proceedings on their own behalf before the courts and the equality body has proven instrumental to making the legislation effective. The use NGOs have made of this standing has significantly helped raise the profile of equality and of the law, and compensate for financial and other hurdles to access to justice, empowering individuals and groups to mobilise for equality rights enforcement. NGOs take the credit not only for the majority of cases taken to date (*actio popularis*, as well as on behalf of individuals), but also for much of the quality of the case law. NGO experts and lawyers have contributed greatly to shaping judges' and equality body officials' understanding not only of the legal concepts and their implications in practice, but also of the societal phenomena of exclusion and disadvantage plaguing vulnerable groups.

²⁴⁴ Decision of 18.05.2007 of the Sofia District Court in civil case N 13789/2006, "*Equality*" National Association for Human Rights of People with Disabilities et al v Minister of Education.



10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Several structures exist within the executive, which have mandates to enforce and/or pursue equality. Some are executive authorities, some are joint governmental-civil society consultative councils. Some of the executive agencies are specialized in one or more particular grounds in one or more specific fields, while others are grounds-inclusive in specific fields. Each body is a decision-maker in its own specific field and regarding its specific grounds. The joint consultative bodies make no decisions but merely inform decision-making processes. The relationships between the various authorities' mandates are not explicitly regulated. Overlapping issues are commonly decided within ad hoc consultation processes, such as joint working groups comprising representatives of various institutions, as well as civil society, or within permanent consultative bodies joining representatives of all institutions concerned, and civil groups.

Within the Council of Ministers, the *National Council for Cooperation on Ethnic and Demographic Issues* (NCCEDI) is the body responsible for **ethnic** relations. NCCEDI is a consultative body with a mandate to assist the government in carrying out public policy on ethnic minorities, and to coordinate between the government and minorities' organizations and other interested NGOs.²⁴⁵ NCCEDI is comprised of senior public officials and ethnic minorities' associations' representatives. Its tasks include promoting ethnic equality, and studying the specific problems facing ethnic minorities²⁴⁶. NCCEDI is backed by the administration of the *Ethnic and Demographic Issues Directorate* within the Council of Ministers.

At regional government level, there are 22 *regional councils on ethnic and demographic issues*, which are local versions of NCCEDI meant to deal with local race relations. These are comprised of regional and local government representatives, regional communal services suppliers, NGOs, and municipal ethnic issues experts. Similar consultative councils also exist at municipal level with similar functions.

Under the Minister of Education there is a *Consultative Council on Education for Children and Students from Ethnic Minorities* charged with consulting the Minister on forming and implementing a national policy of educational integration of minority children, including desegregating Roma kindergartens and schools; forming strategies for incorporating knowledge about ethnic minorities in curricula;²⁴⁷ carrying out studies; giving opinions on draft legislation; collecting and keeping data on public and private educational integration initiatives.²⁴⁸ The Council is comprised of public officials, university professors, public organizations' representatives and NGOs.²⁴⁹

²⁴⁵ Art. 1 of the Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Demographic Issues within the Council of Ministers.

²⁴⁶ Art. 2 (1.10) of the Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Demographic Issues within the Council of Ministers.

²⁴⁷ Art. 1-2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science establishing CCECSEM.

²⁴⁸ Art. 2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science.

²⁴⁹ Art. 4 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science.



Under the Minister of Education there is a *Centre for Educational Integration of Children and Students from Ethnic Minorities*. Its task is to assist the Ministry of Education in implementing the policy of educational integration of minority students.²⁵⁰ The Council is charged with developing and funding projects promoting ethnic minority students equal access to quality education.²⁵¹ It fundraises via donations by donor institutions, national, foreign or international, and a subsidy from the Ministry of Education's budget.²⁵²

Within the Ministry of Culture there is a *Roma Public Council on Cultural Issues* and a *Council on Cultural Diversity* whose principal tasks are to assist the Ministry's policy of cultural integration of minorities.²⁵³

The Deputy-Minister of Labour and Social Policy serves as national coordinator of the **Roma Inclusion Decade 2005-2015**.

Within the Ministry of Labour and Social Policy, the *Social Protection and Social Inclusion Directorate* is in charge of developing public policy and programmes to integrate **vulnerable groups** and protect **children**.²⁵⁴ Its tasks include strategizing and planning against poverty and social isolation.²⁵⁵ It coordinates the government's work on implementing the EU accession criteria in the field of, inter alia, protection of children and **people with disabilities**.²⁵⁶ Specifically to people with disabilities, this directorate organizes the activities of the National Council on Integration of People with Disabilities.²⁵⁷ It is also in charge of strategizing about government-NGO cooperation in the field of integration of vulnerable groups.²⁵⁸

Another directorate within the Ministry of Labour and Social Policy, the *Demographic Policy and Equal Opportunities Directorate*, is in charge of the policy on equal opportunities. Its tasks include: developing methodologies to monitor and study equality; studying the poverty risks facing **children** of different **ethnic** and social groups; analyzing domestic legislation for conformity with EU law in the field of equal opportunities regardless of **sex and age**, and equal access to education and healthcare; developing the government's policy on fighting poverty and social exclusion among children and **young people**; collecting and maintaining databases on equal opportunities; drafting legislation on equal opportunities; coordinating the implementation of National Action Plans to Promote Equality Between Women and Men, and developing measures to achieve equality between women and men on the labour market; preparing opinions and instructions for private parties regarding compliance with equal opportunities legislation; coordinating with other bodies engaged in equal opportunities work, including the independent equality body.²⁵⁹

²⁵⁰ Art. 1 of Decree N 4 of the Council of Ministers of 11.01.2005 establishing CEICSEM.

²⁵¹ Art. 2 of Decree N 4 of the Council of Ministers of 11.01.2005.

²⁵² Art. 9 of Decree N 4 of the Council of Ministers of 11.01.2005.

²⁵³ Based on information published at the Ministry of Culture's Internet site at <http://mc.government.bg/page.php?p=13&s=24&sp=0&t=0&z=0>, in Bulgarian.

²⁵⁴ Based on information published at the Ministry of Labour and Social Policy's Internet site at http://www.mlsp.government.bg/bg/ministry/dpt_social.htm, in Bulgarian.

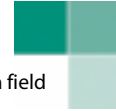
²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Information published at the Ministry of Labour and Social Policy's Internet site at http://www.mlsp.government.bg/bg/ministry/dpt_demograf.htm, in Bulgarian.



The national **gender** equality policy, too, is assigned to the Ministry of Labour and Social Policy.²⁶⁰ Under the Minister of Labour and Social Policy there is a *Consultative Commission on Equal Opportunities for Men and Women* charged with consulting the development of the annual National Plan to Promote Employment.²⁶¹ The Commission comprises representatives of public authorities, social partners and NGOs.

At Council of Ministers level, there is another body in charge of national **gender** equality policy - *National Council on Equality Between Women and Men* - a consultative body for cooperation between the government and NGOs.²⁶² It has a mandate to: consult the Cabinet; give opinions on draft legislation and policy decisions pertaining to gender equality; give opinions on draft decisions by the Cabinet as to their consistency with gender equality goals; coordinate governmental bodies and NGOs for purposes of implementing the national gender equality policy; propose, alone or jointly with the independent equality body, measures to implement the national gender equality policy; maintain contacts with similar bodies in other countries and international organisations; conduct relevant studies.²⁶³

The *National Council on Integration of People with Disabilities* within the government is a similar consultative body charged with **disability** equality policy.²⁶⁴ Its tasks include: assisting the implementation of the policy for integration of people with disabilities; studying and analyzing disabled people's needs, and making proposals for action to authorities, organizations, and commercial entities; giving opinions on draft legislation pertaining to disabled people's integration; facilitating the coordination between authorities and other organizations, and the organizations of, and for people with disabilities; interacting with the Council on Tripartite Cooperation, the National Council on Cooperation on Ethnic and Demographic Issues, the National Council on Child Protection, and the State Agency on Child Protection; maintaining relations with disability NGOs and international organizations; raising public awareness of disability issues.²⁶⁵

The *Agency for People with Disabilities*, a separate executive agency under the Minister of Labour and Social Policy, is the body charged with implementing the public policy of integration of people with disabilities.²⁶⁶ Its tasks include: creating and maintaining a database on people with disabilities; keeping a register of the specialized enterprises and cooperatives of people with disabilities; developing programmes and funding projects for stimulating economic initiatives for the benefit of people with disabilities; developing programmes and funding projects for social integration of people with disabilities; awarding employers funds for accommodating working places to disabled people's needs; giving opinions on draft legislation pertaining to disability; reporting annually on the measures for disabled people's integration.²⁶⁷

²⁶⁰ Information published at the Ministry of Labour and Social Policy's Internet site at <http://www.mlsp.government.bg/equal/policy.asp>, in Bulgarian.

²⁶¹ Ibid. CCEOMW was established in 2003 (ibid.).

²⁶² Art. 1 of the Regulations on the Structure and Work Organisation of the National Council on Equality Between Women and Men. NCEWM was established in 2004 by an act of the Council of Ministers.

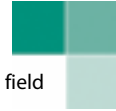
²⁶³ Art. 2 of the Regulations on the Structure and Work Organisation of the National Council on Equality Between Women and Men.

²⁶⁴ Art. 2 of the Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, adopted 17.12.2004, establishing NCIPD.

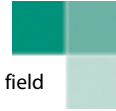
²⁶⁵ Art. 3 of the Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities.

²⁶⁶ Art. 2 (1) of the Structural Regulations of the Agency for People with Disabilities, in force as of 1 January 2005.

²⁶⁷ Ibid.



There is no governmental structure to deal with sexual orientation policy.



Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country

Date

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Protection Against Discrimination Act	January 2004	sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or international treaty the Republic of Bulgaria is a party to.	civil law	universal	ban on 8 forms of discrimination (direct, indirect, harassment, sexual harassment, victimisation, incitement, inaccessible environment, racial segregation); universal personal scope; reasonable accommodation duties; positive duties; shifting burden of proof; specialised body to adjudicate and promote equality; judicial remedy; class actions and <i>actio popularis</i>

					claims; NGO interveners; exemption from costs.
Integration of Persons with Disabilities Act	January 2005	disability	civil law		ban direct and indirect discrimination; reasonable accommodation duties employment, education, infrastructure etc.; positive measures.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country

Date

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	yes	yes		yes	yes
Protocol 12, ECHR	no	no		no	no
Revised European Social Charter	yes	yes		Ratified collective complaints protocol? yes	yes
International Covenant on Civil and Political Rights	yes	yes		yes	yes
Framework Convention for the Protection of National Minorities	yes	yes		n/a	yes
International Covenant on Economic, Social and Cultural Rights	yes	yes		n/a	yes
Convention on the Elimination of All Forms of Racial Discrimination	yes	yes		yes	yes
Convention on the Elimination of Discrimination Against Women	yes	yes		yes	yes
ILO Convention No. 111 on Discrimination	yes	yes		yes (collective)	yes

Convention on the Rights of the Child	yes	yes		n/a	yes
Convention on the Rights of Persons with Disabilities	no	no		no	no