



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

COUNTRY REPORT 2008

BULGARIA

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State of affairs up to 31 December 2008

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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 Overview/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.



Please clearly and briefly indicate whether the Member State had taken advantage of the option to defer implementation of Directive 2000/78 EC to 2 December 2006 in relation to age and disability?

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.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

Bulgaria has not taken advantage of the option to defer implementation of Directive 2000/78.

Parallel to the Protection Against Discrimination Act, 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.

The Protection Against Discrimination Act defines indirect discrimination in a way that makes judges and the equality body 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, very rarely show understanding of the concept of indirect discrimination, some fusing it with direct discrimination. Adjudicators have applied the concept of indirect discrimination to a number of cases of clear cut direct less favourable treatment.

The adverse implications in such cases are serious because the absolute ban on direct discrimination is then diluted in such reasoning by the general justification test valid only for indirect discrimination.



The Supreme Administrative Court has repeatedly refused to recognise that the Protection Against Discrimination Act explicitly prohibits employers from announcing discriminatory requirements for vacant jobs.¹ The court simply denies that the law prohibits discriminatory job advertisements. As a result, the equality body which is under judicial review by this court may change its approach to suit that of the court, impacting badly on the implementation of the law.

The definition of incitement to discrimination, including instructions to discriminate, under the Protection Against Discrimination Act is not 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 addressee.

The definition of racial segregation under the Protection Against Discrimination Act is not compatible with European law because it explicitly requires the state of separation to be 'forced'. It thus implies that segregation may be chosen, i.e. that segregated persons may have waived their right not to be discriminated against, including not to be segregated on racial grounds. Yet, the European Court of Human Rights has consistently held in Roma segregation cases that no waiver of the right to non-discrimination in this context is possible because it would conflict with an important public interest.²

The equality body is growing in capacity. The quality of its case law has improved substantially in 2008. The body has emerged, despite a number of persisting errors and deficiencies, as a rights defender institution without precedent on the domestic scene.

Strengths

The body systematically relies on international law, including Community law. It explicitly accords international norms priority over domestic legislation, as provided for under the Constitution. In one case, the body held, unprecedentedly in Bulgaria, that domestic authorities may not seek to justify their failures to respect international obligations by relying on domestic laws.³ The body has expressly held that the authorities are bound to repeal all domestic legislation that contradicts international antidiscrimination law.

In a number of cases, the body explicitly relies on the result to be achieved, as stipulated by the Directives. It has taken a markedly strong stance on harassment and victimization, driven by teleological construction. The body regularly instructs discriminators to take specific measures to eliminate discrimination or its consequences. It systematically orders that discrimination practices be stopped, and abstained from.

For instance, it has instructed several media to introduce internal mechanisms for self-control and prevention of discrimination, and to periodically report to it on the results.

A new development in 2008, the body has several times ordered discriminators to apologise in the media and to publish the body's decision against them at their own expense.

¹ Inter alia, Decision N 11981 of 29.11.2007 in administrative case N 7976/2007; Decision N 11352 of 19.11.2007 in administrative case N 7975/2007.

² D.H. v. Czech Republic, Sampanis v. Greece.

³ Decision N 37 of 20.02.2008 in case N 116/2007.



The body's handling of the shifting burden of proof has also visibly evolved. The body increasingly effectively requires respondents to provide a convincing explanation and prove legitimate, non-discriminatory reasons for what they did. In some cases, it explicitly declares respondents' explanations unsound and refuses to credit them, even where there is some proof of them, where they are inconsistent or unrealistic, and the proof cannot be wholly trusted. The body is developing strong case law on racist hate speech, in particular anti-Roma speech. It has reasoned strongly against reporters announcing suspects' alleged Romani ethnicity. It qualifies such practice as hate speech and harassment. The body has critically assessed media self-regulation in this respect and strongly judged the formality of adopted measures. Its consistent approach to hate speech is that freedom of expression is limited by a constitutional imperative to protect human dignity, safeguarded by the ban on harassment.

The body has progressively ruled based on international law that racial segregation may be at hand without coercion, where separation is a product of objective tendencies. This liberal construction transcends the formal limits of the Protection Against Discrimination Act's definition, which requires 'forced' separation.

Weaknesses

The equality body's case law is still ridden with serious contradictions. Its approach to discriminatory provisions in laws or secondary legislation is incoherent. By some decisions, the body acknowledges that rules, both primary and secondary, that differentiate on protected grounds do constitute discrimination. In some cases, it does not hesitate to give binding instructions to responsible institutions to make the necessary legislative changes. In others, however, it refuses to rule whether there is discrimination at hand, just because the impugned treatment was provided for under legislation, denying in this way its own competence to enforce the Protection Against Discrimination Act's universal scope.⁴ In one case, the body expressly declared it had no power to judge whether a secondary legislation rule contradicted the Protection Against Discrimination Act as only the courts had.⁵ The body has refused to hold parties who applied a discriminatory norm liable for discrimination.⁶ It has not used its monitoring powers to ex officio identify and declare discriminatory norms in legislation. Even in cases where parties have confronted it with clearly discriminatory norms, the body has hesitated to declare them in breach of discrimination law.⁷

In some cases, the body has explicitly deferred to legislators' discretion in providing for unequal treatment, disregarding the Protection Against Discrimination Act.⁸

In one case, it expressly held, in direct denial of its powers under the Protection Against Discrimination Act, that it lacked a power to ex officio propose legislative changes.⁹

⁴ Inter alia, Decision N 57 of 04.04.2008 in case N 175/2007. The case concerned an allegation by a man with a disability that secondary legislation permitted disabled drivers to only drive vehicles they owned themselves, but not vehicles owned by persons without disabilities.

⁵ Ibid.

⁶ For example, Decision N 1 of 11.01.2008 in case N 44/2007. The case concerned a provision in the Academic Degrees and Academic Titles Act barring access to assistant professor positions on age grounds. The body declared it had to conduct "a full-scale review" of the rule in order to decide whether to suggest to Parliament to change it.

⁷ For example, Decision N 1 of 11.01.2008 in case N 44/2007. The case concerned a provision in the Academic Degrees and Academic Titles Act barring access to assistant professor positions on age grounds. The body declared it had to conduct "a full-scale review" of the rule in order to decide whether to suggest to Parliament to change it.

⁸ Inter alia, Decision N 83 of 16.04.2008 in case N 201/2007.

⁹ Ibid.



The body still does not conceptualise indirect discrimination according to European standards. It still considers indirect discrimination to be covert direct discrimination. It does not interpret correctly the phrase “apparently neutral”. In one case, it expressly declares that indirect discrimination is at hand because the impugned act was “apparently neutral (that is, not explicitly stating sexual orientation as a ground)”.¹⁰

The equality body, as well as some judges, still takes account of intent or purpose in some cases in order to find discrimination.¹¹

In some cases, the body requires proof of the alleged facts in order to even consider the complaint. In one case, where the complainant submitted that he had been verbally refused bank crediting on age grounds, the body required him to produce written proof, and when he failed to, declared the complaint inadmissible.¹² Instead of using its powers to investigate the facts, and allow the parties to use the formal proceedings for evidence-gathering, the body simply barred the case, denying the alleged victim access to a remedy.

The body has on occasion refused to consider (on admissibility) or uphold (on the merits) discrimination complaints by persons with disabilities who failed to produce medical proof of their disability. This conflicts with the definition of disability, which is only concerned with the fact of impairment, regardless of whether it was medically diagnosed or not.

The equality body still in some cases allows in principle for general justification of direct discrimination, in clear conflict with the law.¹³

In some cases, it fails to acknowledge that less favourable treatment was based on a protected ground because that ground was not proven, even though it was proven that the alleged discriminator had a perception of it.¹⁴

¹⁰ Decision N 50 of 24.03.2008 in case N 17/2006. The case concerned a refusal by a mayor to allow a gay event in the open. See also Decision N 199 of 12.09.2008 in case N 188/2007 for another example of false analysis of indirect discrimination as differential treatment whose causal link to a protected ground is not explicit. The case concerned a complaint by a group of renal insufficiency patients that dialysis in their preferred (private) hospital was not paid for by the state in contrast to dialysis in municipal or state-owned hospitals. The body held that this different treatment of privately owned hospitals, and by implication, their patients, constituted indirect discrimination against the patients on grounds of disability (sic).

¹¹ Inter alia, Decision N 13 of 18.01.2008 in case N 56/2007; Decision N 220 of 21.10.2008 in case N 165/2007; Decision N 241 of 24.11.2008 in case N 215/2007. The first case concerned age discrimination in access to employment. A job seeker complained of an Internet job ad with a ‘35 years maximum’ requirement. The body expressly held that the requirement was discriminatory but refused to find a breach of the law because the employer “had not intentionally introduced restrictions based on age”. The second case concerned an allegation by a Roma man that he was harassed on racial grounds by a neighbour. The body expressly declared that it was “necessary to prove that such harassment was committed consciously on ethnic grounds” and refused to find a breach of the law. In the third case, a Roma organization alleged that the national railroad company was liable for racial segregation because it had announced plans to build a protective wall in a Roma settlement in Sofia bordering the railway. The body held that such construction did not “aim at separating the inhabitants of the area” and “therefore, there was no breach” of equality legislation.

¹² Decision N 149 of 27.06.2008 in case N 10/2008.

¹³ Inter alia, Decision N 15 of 21.01.2008 in case N 62/2007. The case concerned alleged harassment of a Roma nurse by a co-employee. The body declared *obiter* that discrimination was unequal treatment without reasonable and well-grounded justification.

¹⁴ Inter alia, Decision N 88 of 22.04.2008 in case N 49/2007, concerning Chechen ethnicity, where employees of respondent had described the complainant as “an exceptionally aggressive Chechen”. The case was about a non-national detained for purposes of deportation. The detainee alleged that he was ill-treated and disadvantaged in terms of access to lawyer *inter alia* based on his ethnicity.



The body's approach to the protected ground as an element of discrimination is inconsistent. In some cases, if no specific ground is nominated, it refuses to treat the complaint as admissible.

However, in many other cases, the body rules on the merits, including by finding discrimination, without any concrete ground being even mentioned, or established as a cause for the impugned treatment.

This tendency of the equality body's considering and finding discrimination without a particular ground culminates in its use of self-devised, 'groundless' forms of discrimination – the so called “discrimination in the exercise of the right to labour” and “harassment at the workplace”. The latter form the body introduced in 2008. Practically, any mistreatment, regardless of its cause, qualifies as discrimination in that paradigm. Another aspect of this uncontrolled expansion of the legislation's concept is the very broad way in which the body construes the protected ground of ‘personal status’. Under its construction, any circumstance or trait constitutes personal status, including even being in conflict with relatives, or expressing critical opinions. This expansion of the legislation's ambit diminishes the body's capacity to deal adequately with priority issues of race, disability, sexual orientation and other ‘group’ discrimination. It increases the case load, resulting in longer proceedings, and prevents the body from focusing ex officio on select central matters.

Importantly, the body does not use its power to start ex officio proceedings in any strategic way. It has initiated its own inquiries ad hoc, without coherence, without prioritising issues, sometimes for (relatively) trifling matters. It has failed to target the most serious issues of discrimination, such as Roma segregation in education, Roma destitution and isolation in housing, people with disabilities' institutionalization, inter alia.

The equality body's docket is growing. It has rendered roughly about 300 decisions in 2008. The number of complaints is apparently increasing.

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:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (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 two 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)

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



Roma

Important cases decided in 2008 concerning Roma discrimination fall roughly into two categories: access to and provision of services, including healthcare; and negative stereotyping (hate speech/ incitement to discrimination/ harassment).

Name of the court: Sofia City Court

Date of decision: 16 January 2008

Name of the parties: Stefka Dimitrova v. “Sveta Sofia” EAD

Reference number: Civil case N 3825/2006

The appeals court held a hospital liable for having discriminated against a Roma woman by refusing her urgent medical attention after a miscarriage. The woman was told to pay for an examination in direct breach of urgent medical aid legislation. She returned to her house to fetch the money but when she produced it, hospital staff asked for a larger sum that the woman was unable to pay. She was sent away without being examined, while bleeding. The appeals court overturned a formalistic and superficial decision by the trial court, which had found against the claimant. The appeals court decided the case on the basis of the Constitution and international equality law, including the Convention on the Elimination of All Forms of Race Discrimination and the European Convention on Human Rights, as the national legislation transposing the EC Directives was not applicable *ratione temporis*. Still, the court applied the shifting burden of proof provided for under the latter legislation because it considered it a retroactive procedural norm and found this warranted under Art. 13 of the European Convention’s requirement for an effective remedy. The court reasoned that the shifting burden of proof reflected the weaker position of a discrimination victim and furthered the objective of the law to provide effective protection. The judgment declared the respondent hospital had failed to rebut the presumption of discrimination raised by the claimant. The court awarded compensation in the amount sought by claimant (a symbolic 25 EUR).¹⁵

Name of the court: Sofia City Court

Date of decision: 15 October 2008

Name of the parties: Vassil Chaprazov and Ors v. Volen Siderov

Reference number: Civil case N 2858/2006

The trial court held that extreme anti-Roma hate speech¹⁶ by a political leader did not constitute harassment or incitement to discrimination. While it was established as a fact that the impugned statements were widely broadcast, the court did not consider them to be directed at less favourable treatment of Roma because the respondent “only” urged that Roma pay taxes and work “like the rest of citizens”.

The court, manifesting clear racial bias, declared it a “fact that certain ethnic minority groups commit crimes... and do not carry out their duties [that are] the same for all Bulgarian citizens... to respect public order and pay their debts...” The ruling is quite a negative precedent in protection against political hate speech. It is currently pending before the appeals court.

¹⁵ The case was brought in 2002 when the likelihood of obtaining a judicial declaration of race discrimination against Roma, especially in healthcare, was small, and advocates strategically sought to maximise it by demanding only nominal amounts. It was considered that symbolic claims would encourage judges to uphold them more than demands for real sanctions would.

¹⁶ Including repeated descriptions of Roma like “brutalised” “gangs”, perpetrators of “terror”, “brutal, sadistic beating”, murders, rapes and plunders, and “genocide”; agents of “gypsyfication” etc.



Name of the court: Plovdiv Regional Court

Date of decision: 28 May 2008

Name of the parties: X, Y, Z v. EVN Bulgaria Electrorazpredelenie - Plovdiv

Reference number: Civil case N 579/2008

The appeals court refused to hold the local power supplier liable for discrimination against regularly paying Romani consumers in a Romani settlement who were subjected to power cuts because of unpaid debts of neighbours. The court failed to recognize that indiscriminate power cuts in the settlement constituted less favourable treatment of regular payers residing there, in comparison to regular payers residing in non-Roma areas who are not sanctioned for others' debts. The court explicitly reasoned that there was no discrimination because there was no comparison – the Roma settlement lacked a non-Roma comparator because of its “specificity”, meaning a bad technical infrastructure and a high percentage of debt/theft. The court's construction of the requisite comparator in this case results in a biased application of the law to this Roma case. The court's construction ignores the comparison between individual consumers within and outside the Romani settlement, comparing instead Roma and non-Roma communities as such, and ascribing collective negative characteristics to the former. The court uncritically accepted the respondent company's claim that in the Roma settlement it was technically impossible to disconnect individual consumers, without analyzing the company's own responsibility for this alleged technical deficiency. The case is currently pending appeal before the Supreme Court of Cassation. The Supreme Court held the appeal admissible on grounds that the issue of the comparator was a significant one, and had been decided differently by different courts, and therefore needed to be dealt with by the Supreme Court in this case.¹⁷

Name of the court: Protection Against Discrimination Commission

Date of decision: 04 November 2008

Name of the parties: Protection Against Discrimination Commission v. Urgent Medical Aid Centre - Sofia

Reference number: Case N 173/2007

The equality body declared in ex officio proceedings that the respondent medical organisation was liable for direct ethnic discrimination against a Roma patient. The less favourable treatment consisted in delaying an ambulance. Despite the fact that the woman died as a result of the events, the body failed to sanction the respondent clinic. It only ordered it to undertake “concrete and effective” measures to prevent future discrimination but without specifying those measures.

Name of the court: Protection Against Discrimination Commission

Date of decision: 20 June 2008

Name of the parties: Interethnic Initiative for Human Rights Foundation v. Mayor of Ovcha Kupel

Reference number: Case N 40/2007

The equality body ruled that the mayor of a district in Sofia committed harassment against Roma in general by making extreme anti-Roma statements on the national radio. The mayor opposed the construction of housing on his district's territory for a Roma community that was to be evicted from another area. He said inter alia that “Cows would cause much less trouble than a Gipsy neighbourhood” and “A Roma settlement is ten times more dangerous, next to residential areas, than a waste dump”.

¹⁷ Ruling N 35 of 20.10.2008, civil case N 3097/2008.

The equality body imposed a fine of the equivalent of EURO 500 on the mayor and instructed him to abstain from such statements in the future. It also ordered the mayor to apologise on the radio for his statements, as well as to publish at his own expense the dispositive part of the decision against him in one of the two best read national dailies. However, the decision expressly refused to recognise that the impugned hate speech also constituted incitement to discrimination, in addition to harassment.

The body reasoned that for incitement to be at hand, it was necessary that the speaker addressed a particular person intending to cause them to perform a particular act of discrimination, whereas in the instant case the mayor was ‘only’ generally addressing the public at large. In addition, the body considered it not established that the mayor was in a position to influence the public.

Name of the court: Protection Against Discrimination Commission

Date of decision: 25 July 2008

Name of the parties: “Defacto” Roma Information Agency v. Bulgarian National Television

Reference number: Case N 42/2007

The equality body held the oldest national public television operator liable for highlighting the Roma identity of individual crime suspects. The body ruled that such stereotyping constituted harassment of all Roma persons. It held that the provider’s measures to ensure non-discrimination were only formal and declaratory, and ordered it to introduce an internal self-control mechanism to prevent discrimination, and to periodically report to the body on the results of its implementation. The body specifically ordered the organisation to take concrete action to abstain from broadcasting information in a way that linked individual negative incidents with an ethnic community as such.

Name of the court: Protection Against Discrimination Commission

Date of decision: 23 December 2008

Name of the parties: “Romani Baht” Foundation v. Balkan News Corporation EAD

Reference number: Case N 179/2007

The equality body held a national television operator liable for presenting Roma in a newscast as aggressive, threatening, and uncivilized. The body ruled that such stereotyping constituted ethnic harassment. It ordered the provider to introduce an internal self-control mechanism to prevent discrimination and to periodically report to the body on the results of its implementation. The body specifically ordered the company to take concrete action to abstain from broadcasting information in a way that linked individual negative incidents with an ethnic community as such.

Name of the court: Protection Against Discrimination Commission

Date of decision: 19 February 2008

Name of the parties: “Defacto” Roma Information Agency v. BBT and Boyan Stankov-Rassate

Reference number: Case N 72/2007

The equality body held that a TV presenter had committed racist harassment on air affecting the entire Romani community by making statements, such as “Gypsies steal”, “Gypsies attack police officers”, and “Gypsies don’t want to be educated”. The body declared that such statements resulted in linking Roma people to negative social phenomena, helping to reinforce stereotypes and provoke hatred against them. It declared that the impugned statements infringed the dignity of the entire Romani community, and created an insulting and hostile environment for them. However, the body imposed no sanction on the presenter.

It merely referred the case to the media regulator and the Prosecutor's Office assuming that those institutions were competent to sanction the breach. The body further failed to qualify the impugned conduct as incitement to discrimination in addition to harassment.

The Supreme Administrative Court overruled this decision on appeal.¹⁸ The court adopted a restrictive approach and held that, in the media context, only "tendentious and untrue" statements inciting to discrimination would constitute discrimination. There was no proof that the broadcast had been done with such an aim, therefore, there was no harassment. The court ignored the definition for harassment which clearly indicates that intent is irrelevant as long as a pernicious result is at hand. The court also displayed real anti-Roma bias, declaring that the 'facts' concerning Roma as alleged by the presenter were "a part of reality", "facts of objective reality", and "happened and [were] real". The court restrictively interpreted the concept of harassment, holding that it required a specified victim, and Roma TV audience as such, being indeterminate, could not have suffered it. It also arbitrarily declared that the Protection Against Discrimination Act provided no legal basis to challenge allegedly offensive speech.¹⁹

Name of the court: Protection Against Discrimination Commission

Date of decision: 16 April 2008

Name of the parties: "Defacto" Roma Information Agency v. Balkan News Corporation EAD

Reference number: Case N 71/2007

The equality body sanctioned a national TV operator for accentuating the Roma origins of individual perpetrators of a sex crime. The body reasoned that pointing out individuals' ethnic identity in such a context where it has no relevance to the facts helps reinforce existing stereotypes and prejudice against the Roma. The body recognised the existence of negative public attitudes against the Roma as a fact it was aware of ex officio. It ordered the television company to abstain from indicating suspects' ethnicity in the future.

Name of the court: Protection Against Discrimination Commission

Date of decision: 08 October 2008

Name of the parties: "Saint George" National Roma Centre v. Novinar Media EAD and Petko Bocharov

Reference number: Case N 8/2008

The equality body held that a journalist had committed racist harassment of Roma in general by publishing an anti-Roma piece in which he described Roma as "a ticking Gypsy bomb", "parasites in someone else's home", "a malignant tumor", "raging gangs" and similar, and called for "a special authority to control gypsies", "special educational camps for gypsy children" and "special measures to curb the gypsy birth rate", inter alia. However, the body failed to find that such statements also constituted incitement to discrimination. It imposed no sanction on the author, other than an order to abstain from such statements in the future and to apologise publicly to the Roma group who brought the complaint. The body further ordered the newspaper to introduce an internal mechanism to prevent harassing expression, and to abstain from further publishing information that negatively stereotypes the entire Romani community.

¹⁸ Supreme Administrative Court, 17.12.2008, BBT and Boyan Stankov-Rassate v. "Defacto" Roma Information Agency, Case N 5163/2008.

¹⁹ The court used the same reasons to decide similarly another media hate speech case (Decision N 13778 of 12.12.2008 in case N 10913/2008).



Name of the court: Protection Against Discrimination Commission

Date of decision: 25 January 2008

Name of the parties: Protection Against Discrimination Commission v. Regional Police Directorates

Reference number: Case N 21/2007

The equality body failed to find that a police practice of publicly reporting the ethnicity of Romani crime suspects, but not others, constituted discrimination. However, the body instructed the Minister of the Interior to abolish the practice. The body had initiated the proceedings ex officio based on a finding that a number of Regional Police Directorates' Internet sites reported only Romani suspects' ethnicity. While the decision failed to make a declaration of discrimination, the body stated that "reporting of suspects' Romani ethnicity in police crime bulletins [...] is a real factor for creating and perpetuating societal prejudices against the Roma [...]".

Instead of applying the concept of direct discrimination to the facts, the body analysed them from the standpoint of harassment. It was found that there was no harassment because the impugned conduct was not the sole cause of existing negative public attitudes towards the Roma.

Name of the court: Protection Against Discrimination Commission

Date of decision: 25 July 2008

Name of the parties: Violeta Draganova v. "Leda" AD and Ors

Reference number: Case N 155/2007

The equality body held a swimming pool operator company liable for refusing entry to a group of Roma clients. The body expressly ruled that self-determination was sufficient to prove the claimant's ethnic identity insofar as there was no evidence adduced to the contrary. The body applied the shifting burden of proof to conclude that the cause for the impugned refusal was the assumed Romani ethnicity of the victims. The body declared direct discrimination, the respondent having failed to prove there was another, legitimate reason for the treatment that was unrelated to race. It imposed a fine of 500 EUR on the provider and ordered it to introduce specific preventive measures; to inform all employees of the decision; and to display at visible spots on the pool's premises provisions of the antidiscrimination law together with a notice that persons can complain to the equality body.

Name of the court: Protection Against Discrimination Commission

Date of decision: 25 February 2008

Name of the parties: "Public Barometer" Civil Association v. "Vodosnabdyavane I Kanalizatsiya" OOD - Sliven

Reference number: Case N 67/2006

The equality body found that the public water provider had discriminated against consumers by keeping prices for Romani consumers, inter alia, lower, and by billing some consumers, primarily Roma, not based on individual water meter indications, as well as by failing to control debtors, primarily Roma, at the expense of regular payers. In this way, the body decided that non-Roma were discriminated against by preferential treatment of Roma, the price for which non-Roma were said to pay. The body ordered the company to abort these practices and recommended that a number of public authorities take action.



Name of the court: Supreme Court of Cassation

Date of decision: 28 November 2007; ref. N 1302/07

Name of the parties: 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.

Name of the court: Supreme Court of Cassation

Date of decision: 27 November 2007

Name of the parties: 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.

Other Ethnicity

Name of the court: Sofia City Court

Date of decision: 26 May 2008

Name of the parties: Yuliana Metodieva v. Volen Siderov

Reference number: Civil case N 847/2007

The appeals court held that a political leader had committed incitement to discrimination and harassment of ethnic minorities by making public statements denouncing the Romani, Turkish and Jewish communities, and all “aliens”. However, the court refused to recognise that the claimant in the case, an Armenian minority woman, had had her rights breached too. It reasoned that the respondent had not verbally attacked the Armenian minority in particular and it was not sufficient that he had attacked all “non-Bulgarians” as such, in addition to expressly mentioning all major minorities.

Sexual Orientation

Name of the court: Sofia City Court

Date of decision: 08 December 2008

Name of the parties: Gyura Borissova v. Prosecutor’s Office of Bulgaria

Reference number: Civil case N 613/2008

The appeals court held the national Prosecutor’s Office liable for direct discrimination against a prisoner based on her assumed homosexual orientation. A prosecutor had refused to file a motion with the court for the woman’s early release, explicitly giving as a reason *inter alia* her homosexuality. The court declared that the very mention of the prisoner’s sexuality, irrelevant for the purposes of early release, was enough to infer discrimination. It held that the respondent institution had failed to meet its burden to rebut this inference. The ruling explicitly states that it was irrelevant that the woman was actually bisexual (rather than homosexual) because the law prohibits discrimination by assumption. It is a very positive precedent also because it finds discrimination using a ‘mixed reasons’ standard. The court found it sufficient that the woman’s assumed homosexuality was one reason among others.

This is also the first time a criminal justice institution is held liable for sexuality discrimination. The court ordered the Prosecutor's Office to refrain from such acts in the future, and to pay EUR 150 in compensation to the claimant.

Disability

Name of the court: Supreme Court of Cassation

Date of decision: 22 January 2008

Name of the parties: R.B. v. Municipality of Plovdiv

Reference number: Civil case N 5117/2007

The highest court held the local government of the second largest Bulgarian city liable for discrimination against a woman with disabilities. The court repealed the lower court's decision, which had refused to recognise that the inaccessibility of public buildings and transportation constituted a breach of discrimination law. The Supreme Court rejected this failure, holding that the initial measures taken by the authorities did not alter the fact that they had failed to carry out their duties to make the environment accessible. It awarded the claimant the equivalent of 5 250 EUR in non-pecuniary damages for her social isolation and exclusion from access to professional and personal fulfilment – an unprecedented amount in Bulgaria in a discrimination case.

This ruling initiated a trend of similar rulings by the Supreme Court in almost identical accessibility cases, declaring absolute the authorities' statutory duties to secure accessibility. On 30 June 2008 the Court ruled that the respondent municipality had committed discrimination by failing to secure an accessible environment that affords people with disabilities unhindered access to all public institutions, or adequate transportation services.²⁰ The very fact of a lacking suitable environment and of existence of architectural barriers constituted discrimination. The Court again awarded 5 250 EUR in damages.

It further ordered the authorities to abort their omission by eliminating the existing barriers to persons with disabilities' access, as well as to abstain from similar inaction in the future. On 03 July 2008 the Court reproduced these reasons and held the same in another accessibility case.²¹ On 15 October 2008 the Court similarly decided another such case, expressly holding that the authorities' discharge of their accessibility duties was to be measured against the extent to which architectural barriers were overcome *in reality*.²² What mattered were actions that produced a *real* result. Unlawful omission was at hand where certain actions were carried out but failed to *result* in accessibility. On 14 November 2008 the Court decided another case along these lines, explicitly holding that the undertaking of *some* measures was legally irrelevant because the law did not require municipalities to *make efforts* for an accessible environment but charged them to *secure* such an environment.²³ On 18 December 2008 a further such case was decided in the same way.²⁴

²⁰ Decision N 556 in civil case N 1514/2007. The lower court had held that the authorities having taken some action to make public buildings accessible and to accommodate transportation services exempted them from liability for discrimination.

²¹ Decision N 589 in civil case N 1728/2007.

²² I cannot produce a footnote here – the Court provided me with a copy of the decision in which all identification data is obliterated.

²³ Decision N 1158 in civil case N 5162/2007.

²⁴ Decision N 1286 in civil case N 3371/2007.

This strong line of Supreme Court decisions changed the case law of the lower courts in Plovdiv. On 01 December 2008, the Plovdiv Appeals Court acknowledged in a remanded case that the authorities had unlawfully omitted to achieve the result, even though they had taken a number of measures.²⁵

Name of the court: Sofia City Court

Date of decision: 07 April 2008

Name of the parties: National Association for Human Rights of People with Disabilities v. Minister of Education

Reference number: Civil case N 2585/2007

The appeals court held the authorities liable for direct discrimination against children with disabilities in general for having failed to create an accessible school and kindergarten environment across the country. The court ruled that the Minister would have fulfilled the statutory duty to adapt education to children with special needs only when each school and kindergarten was made accessible in terms of both architecture and communications. The court reasoned that inclusive education was the principle under the law and every child with a disability was entitled to freely choose any school or kindergarten, therefore each one had to be accessible. The court criticised the Minister for failing to take steps to secure the necessary funding for adaptation and to adopt adequate secondary legislation to adapt curricula and educational materials and requirements to the specific needs of children with disabilities.

Name of the court: Protection Against Discrimination Commission

Date of decision: 20 February 2008

Name of the parties: Teachers of “Saint George” Social Vocational Training Establishment v. Minister of Labour and Social Policy

Reference number: Case N 116/2007

The equality body held the authorities liable for unequal pay of teaching staff at a vocational training special school for people with disabilities in comparison to mainstream teachers. It reasoned that the fact that their teachers were underpaid, affected people with disabilities’ educational, employment and socialization chances.

The body ordered the Minister of Labour, responsible for the establishment, to eliminate the breach and its consequences, and to report the results to the body within a specified time-frame. The body further ordered the government to initiate specific legislative changes in order to amend the impugned situation nationally.

Age

Name of the court: Sofia District Court

Date of decision: 16 January 2008

Name of the parties: Atanaska Russeva and Ors v. National Health Insurance Fund and Ors

Reference number: Civil case N 11716/2006

The trial court ruled that the National Health Insurance Fund, the Ministry of Healthcare, the Bulgarian Medical Association, and the Bulgarian Dental Association were liable for age discrimination against an infant younger than two years whose genetic ailment required him to only take special dietary milk.

²⁵ Decision N 427 in civil case N 1064/2008.



Respondents were held to have discriminated against the baby by excluding infants under 2 years of age from access to National Health Insurance Fund subsidies for the purchase of such milk, while granting such subsidies to children between 2 and 18 years of age suffering from the same ailment. The court ordered the respondents to end the exclusion of infants by providing them with equal access to the subsidies, and to abstain from further repeating such practices. It awarded compensation for both pecuniary and non-pecuniary damages suffered by the baby's parents, the latter in the amount of the equivalent of EUR 250 for each parent.

Religion

Name of the court: Protection Against Discrimination Commission

Date of decision: 22 February 2008

Name of the parties: Ramzie Shaib and Ors v. Vassil Vassilev and Anor

Reference number: Case N 37/2007

The equality body refused to find discrimination in a case where school authorities had interfered with Muslim girls' wearing of headscarves in school. The headmaster had warned the students that they might be banned from wearing their headscarves but had not effectively done so. The equality body held that headscarves were allowed in schools where there was no school uniform. In 2006, it had ruled that the wearing of headscarves in a school where a uniform was adopted was discriminatory against other students and in breach of educational secularism. The 2008 decision failed to recognise the vulnerability of minority students in the context of which threats may constitute discriminatory intimidation or harassment even where not effectively carried out. However, it marks an improvement on the absurd and draconian 2006 decision by which the body had turned equality law against the applicants by imposing a fine on them for merely alleging that a ban on headscarves constituted discrimination.

Name of the court: Supreme Administrative Court

Date of decision: 03 June 2008

Name of the parties: Gueorgui Hadginedelchev v. Sofia University

Reference number: Case N 10383/2008

The court refused to recognise that a requirement of the state Theological School's that students participated in orthodox religious services as a part of the curriculum constituted discrimination against non-believers. The judgment confirmed the decision of the equality body, denying that involuntary involvement of a non-believer in religious practice was less favourable treatment of the latter compared to believers in the same situation.



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."²⁶ 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 definition of disability under the Integration of Persons with Disabilities Act is applicable also in the context of the Protection Against Discrimination Act, as well as any other legislation. 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."²⁷

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.

²⁶ The Integration of Persons with Disabilities Act contains equality norms, as well as other rules on disability.

²⁷ This definition is reproduced literally in the Employment Encouragement Act, § 1.29 Additional Provision.

Persons with permanent disabilities are entitled to extended protection and inclusion measures.²⁸ In practice, the equality body has on occasion refused to consider (on admissibility) or uphold (on the merits) discrimination complaints by persons with disabilities who failed to produce medical proof of their disability.²⁹ This conflicts with the definition of disability, which is only concerned with the fact of impairment, regardless of whether it was medically diagnosed or not.

- 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 in the labour market”, which intersects with a number of protected grounds.³⁰ 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.³¹ 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”.³² 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.”³³ 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”³⁴ as opposed to white.

²⁸ 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.

²⁹ *Inter alia*, Decision N 259 of 17.12.2008 in case N 186/2008.

³⁰ “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.

³¹ “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.

³² Transitional and Final Provisions, § 1.1.

³³ Transitional and Final Provisions, § 1.2.

³⁴ As the overwhelming majority of Bulgarians still refer to people of African origin.

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. The equality body, too, uses 'ethnicity' to define discrimination against Roma. However, it has no overt position that such discrimination is not race discrimination.

- 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. This includes the way equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
- Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

The Protection Against Discrimination Act defines multiple discrimination as "discrimination based on more than one [protected] grounds".³⁵ It places a statutory duty on public authorities to give priority to positive action measures for the benefit of multiple discrimination victims.³⁶ The specialised body, the Protection Against Discrimination Commission, hears multiple discrimination cases sitting in a larger panel of 5 members (rather than the ordinary 3-member panel).³⁷

The Protection Against Discrimination Commission has not taken a specific approach to multiple discrimination cases. It has not used a distinctive test to analyse whether the impugned treatment was based on more than one ground. It has not in any way dealt with the relative complexity of the comparator issue in multiple discrimination cases. It has not discovered yet, so to speak, that there might be issues there. In the context of its generally less than strict manner of analysing the causal link between impugned treatment and protected grounds, the body has not taken any particular care to establish whether all alleged grounds actually played a part in bringing about the treatment in question. Its analyses have been rather approximate. It has not imposed higher sanctions for multiple discrimination.

At this point, no specific difficulties with proving multiple discrimination have emerged. This is largely due to the underdeveloped case law which does not yet properly distinguish the specificity of multiple discrimination claims.

However, with the evolution of the case law it is to be expected that there will be problems. European legislation resolving anticipated issues, such as the appropriate comparator, would certainly be useful.

³⁵ Additional Provisions, § 1.11.

³⁶ Art. 11 (2). Under art. 11 (1) authorities are placed under a general statutory duty to take positive action whenever necessary to achieve the legislation's goals.

³⁷ Art. 48 (3).



- e) *How have multiple discrimination cases involving one of Art. 13 grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

The courts have not taken a specific approach to gender+ cases. For one thing, there is a dearth of such cases (if any). Generally, in cases of multiple grounds the courts have not considered awarding higher damages. They have not elaborated in any specific way on the burden of proof in such cases. They simply have not yet appreciated the distinct challenges posed by multiple discrimination.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

The Protection Against Discrimination Act defines ‘on [protected] grounds’ as ‘on grounds of the actual, past or present, or presumed fact of one or more of these characteristics [...]’.³⁸ Therefore, discrimination on perceived or assumed grounds is explicitly prohibited. Case law by both the equality body and the courts expressly recognises this.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

The Protection Against Discrimination Act defines “on grounds of” as “on grounds of the actual, past or present, or presumed fact of one or more of these characteristics in the person discriminated against, or in another person who is, actually or presumably, associated with the person discriminated against, where this association is a cause of the discrimination.”³⁹ Therefore, discrimination by association, including presumed association, is explicitly banned. Case law by the equality body expressly recognises this.

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”.

³⁸ Additional Provisions, § 1.8.

³⁹ Additional Provisions, § 1.8.



- b) *Are discriminatory statements or discriminatory job vacancies announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*

The Protection Against Discrimination Act explicitly prohibits employers from announcing discriminatory requirements for vacant jobs.⁴⁰ However, the Supreme Administrative Court has repeatedly refused to recognise this provision when reviewing equality body decisions applying it.⁴¹ The court denies that the law prohibits discriminatory job advertisements. As a result, the equality body may likely change its approach to suit that of the court, impacting badly on the implementation of the law.

- c) *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.⁴² 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.

- d) *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”.⁴³ 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 not all grounds are 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.⁴⁴ 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.

⁴⁰ Art. 12 (1).

⁴¹ Decision N 11981 of 29.11.2007 in administrative case N 7976/2007; Decision N 11352 of 19.11.2007 in administrative case N 7975/2007.

⁴² Art. 7 Protection Against Discrimination Act. For specifics, see below, title 4. *Exceptions*.

⁴³ § 1.7 Additional Provision.

⁴⁴ Art. 12, Civil Procedural Code.



- 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 has been explicitly discussed as such in a single court case to date.⁴⁵ In its decision the court explicitly rejected the argument by respondent that testers' testimonies were not credible. The equality body, too, in one case has referred to testing – in an implicitly accepting way.⁴⁶

- 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, equality body, etc)*

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?*

⁴⁵ Case N 453 of 2006 before the Pazardzhik Regional Court, 3rd appeals panel, *Krassimir Anguelov v Optima Group OOD*. The case concerned an explicitly racially-motivated refusal to admit Roma to a public swimming pool. That refusal was documented by testers, Roma and non-Roma, who then served as, respectively, claimant and witnesses in the case.

⁴⁶ Decision N 118 of 30.05.2008 in case N 136/2007. The case concerned an allegation that traffic police targeted only cheaper cars for driver control, and failed to sanction luxury car drivers. The equality body dismissed this but took into account the findings of an “investigating journalist who, as a driver, deliberately committed the same breaches albeit with a different 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. 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.

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.⁴⁷ 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.⁴⁸

⁴⁷ For details, see footnote N 216 below.

⁴⁸ 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.



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.⁴⁹

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.

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.⁵⁰

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.⁵¹ 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.⁵²

b) *Is the use of such evidence widespread? 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?*

⁴⁹ 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.

⁵⁰ Decision N 38 of 07.05.2007 in case N 11 of 2007 before the Protection Against Discrimination Commission. The body 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”.

⁵¹ Art. 12, Civil Procedural Code.

⁵² Ibid. in conjunction with art. 10, Civil Procedural Code.

While it would be exaggerated to say that the use of statistics is widespread, it is not uncommon. Neither judges, nor the equality body has found any problems with the use of statistics. Comparative law has not been a factor, either way.

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.⁵³

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.

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.⁵⁴ Such data may not be collected unless the person concerned consents, or in specific exceptions accompanied with procedural guarantees.

⁵³ 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. Electrorazpredelenie – 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.

⁵⁴ Respectively, art. 21 (2); art. 5; art. 5 (3); art. 9 (5); art. 157 (1).



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.⁵⁵ Public bodies using positive measures do use statistics to design those.⁵⁶

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.⁵⁷

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.

⁵⁵ 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.

⁵⁶ In documents providing for positive measures government institutions use statistical data to analyse the current situation before outlining the respective measures. An example is the National Programme for Improvement of the Living Conditions of Roma 2005-2015, the “Analysis of the Situation” part, available at:

http://www.nccedi.government.bg/upload/docs/NRP_07.03.2006_Final_2.htm. Another example is the Health Strategy for Persons in Unequal Position Belonging to Ethnic Minorities, the “Identification of the Problem” part, available at: http://www.nccedi.government.bg/upload/docs/zdravna_strategia_prieta.htm.

⁵⁷ 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.



- 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.⁵⁸

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case-law) prohibit instructions to discriminate?

If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The Protection Against Discrimination Act bans incitement to discrimination, and defines it to expressly include instructions to discriminate.⁵⁹ 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.

Domestic law does not make any specific provision for legal persons' liability for instructions to discriminate. In fact, the Protection Against Discrimination Act does not ban instructions to discriminate specifically.

It bans 'incitement to discrimination', defining it to expressly include instructions to discriminate. It is generally understood that the Protection Against Discrimination Act makes legal persons liable for acts of discrimination, including incitement (including instructions), committed by employees or others acting on their behalf. Case law by both the courts and the equality body has recognised this liability explicitly.

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? Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

⁵⁸ § 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.

⁵⁹ 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.⁶⁰ An identically-worded duty for employers is reproduced in the Integration of Persons with Disabilities Act.⁶¹ 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.

Under the Civil Servant Act, there is an absolute duty for the employer to “adapt the workplace of the civil servant with a permanent disability in a way that makes it possible for the service to be carried out.”⁶²

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.⁶³ 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.⁶⁴ This duty, too, is absolute.

Higher education institutions, too, have absolute accommodation duties under the Integration of Persons with Disabilities Act.⁶⁵

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.⁶⁶ This duty pre-dates both the Protection Against Discrimination Act and the Integration of Persons with Disabilities Act.⁶⁷ 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*.⁶⁸

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.⁶⁹ 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.⁷⁰

⁶⁰ Art. 16 and art. 32.

⁶¹ Art. 24.

⁶² Art. 30.

⁶³ Art. 17.2.

⁶⁴ Art. 18.

⁶⁵ Art. 20.

⁶⁶ Art. 314. Such accommodation can include both alleviations in work conditions for the same job, or reassignment to another job.

⁶⁷ The Labour Code, including this particular provision, has been in force since 1986.

⁶⁸ Art. 317 (4).

⁶⁹ Art. 16 (1.4).

⁷⁰ 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).

The definition of disability is one for all purposes under domestic law, including discrimination and reasonable accommodation.⁷¹ Therefore, the scope of persons who can claim disability for purposes of enforcing non-discrimination rights is the same as those who can claim reasonable accommodation. However, the equality body has on occasion refused to consider (on admissibility) or uphold (on the merits) discrimination complaints by persons with disabilities who failed to produce medical proof of their disability.⁷² This conflicts with the definition of disability, which is only concerned with the fact of impairment, regardless of whether it was medically diagnosed or not.

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The Protection Against Discrimination Act provides for a duty to provide reasonable accommodation for people with disabilities in education.⁷³ The definition of disproportionate burden under the law is the same as with reasonable accommodation in employment – “when the costs are unsoundly large and would seriously hamper the institution”.⁷⁴ The Integration of Persons with Disabilities Act also provides for accommodation duties for both schools and universities.⁷⁵ These duties are absolute.

- c) *Does failure to meet the duty of reasonable accommodation 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.

⁷¹ Integration of Persons with Disabilities Act, § 1, Additional Provisions.

⁷² Inter alia, Decision N 259 of 17.12.2008 in case N 186/2008.

⁷³ Art. 32.

⁷⁴ Ibid.

⁷⁵ Art. 17 and art. 20.



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.

d) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?

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]”.

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.⁷⁶ Such women are entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.⁷⁷

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.⁷⁸ 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.⁷⁹ Employers are under a duty to assign workplaces and jobs suitable for nursing women each year.⁸⁰

e) Does the national law clearly provides for the shift of the burden of proof, when claiming the right to reasonable accommodation?

The law does not specifically provide for the shifting burden of proof to apply in reasonable accommodation cases. The Protection Against Discrimination Act states in a general way that the burden of proof shifts “in proceedings for protection against discrimination”.⁸¹

Since the law does not specify that failure to provide reasonable accommodation (in contexts other than architectural inaccessibility) constitutes discrimination, it is possible to argue that the shift of the burden of proof does not apply to reasonable accommodation claims. Conversely, it is also possible to argue that it does apply because the duty for reasonable accommodation is provided for under the Protection Against Discrimination Act and, therefore, any proceedings to enforce this duty are ‘proceedings for protection against discrimination’. As there is no case law yet on this issue, the legal situation is open to interpretations.

f) 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?

⁷⁶ Art. 307 (2) and (3), Labour Code.

⁷⁷ Art. 309 (1), Labour Code.

⁷⁸ Ibid.

⁷⁹ Art. 309 (2), Labour Code.

⁸⁰ Art. 309 (4), Labour Code.

⁸¹ Art. 9.

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.

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.⁸² Failures to do so have been contested under general tort law, but not under discrimination law.

g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation?*

If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

National law provides for a general anticipatory duty for accessibility for people with disabilities. The Protection Against Discrimination Act expressly states that building and maintaining a public architectural environment that hinders people with disabilities' access constitutes discrimination.⁸³ The Integration of Persons with Disabilities Act provides for integration of people with disabilities in the working environment via an accessible architectural environment.⁸⁴ It absolutely mandates that free access to public buildings and infrastructure be provided to people with disabilities by bringing down architectural, transportation and communications barriers.⁸⁵ The Civil Servant Act too, binds authorities to secure free access for people with disabilities to administration buildings by bringing down architectural, transportation and other barriers.⁸⁶

The Territory Organisation Act provides that transport infrastructure shall ensure "best conditions" for accessibility for people with disabilities.⁸⁷ It further provides that city planning shall set accessibility standards,⁸⁸ and create conditions for environment and technical infrastructure accessibility.⁸⁹ It provides that construction shall be done according to accessibility standards, with the competent authorities under a duty to annually program and fund measures to bring the urbanized territory, buildings and equipment in accordance with accessibility standards.⁹⁰ Ordinance N 6 of 26 November 2003 on Building an Accessible Environment in Urbanized Territories (Ordinance N 6) sets the standards for planning and building an accessible urban environment.

⁸² Art. 33-34, 36, 38.

⁸³ Art. 5.

⁸⁴ Art. 2.4 in conjunction with art. 4.4.

⁸⁵ § 6, Additional Provisions.

⁸⁶ § 11, Final Provisions, Civil Servant Act Amendment Act of 2008.

⁸⁷ Art. 75 (3).

⁸⁸ Art. 107.5.

⁸⁹ Art. 112 (4).

⁹⁰ Art. 169 (2).

Under the Integration of Persons with Disabilities Act, state bodies and local government authorities are responsible for the organisation of urbanized territory.⁹¹ The Minister of Regional Development and Public Works is responsible for adopting standards for accessible buildings and infrastructure.⁹²

The Minister of Transportation is responsible for adopting standards for public transportation accessibility.⁹³ Municipalities are responsible for building accessible kindergartens and schools, and for providing accessible public transportation.⁹⁴ Under the Territory Organisation Act, construction oversight officials are responsible for appraising a new building's accessibility for people with disabilities.⁹⁵ The Minister of Regional Development and Public Works is responsible for control over the implementation of this law, including accessibility standards for building.⁹⁶

Ordinance N 6 defines architectural accessibility in a broad way – all buildings must be accessible with the exception of two explicitly and exhaustively listed categories: 1) residential buildings of low or medium height with no domiciles for people with disabilities, and dormitories/ hotels with less than 20 beds; 2) commercial premises and eating establishments of less than 100 square meters (in cities of more than 100 000 inhabitants), or 80 square meters (in cities of between 30 000 and 100 000 inhabitants), or less than 50 square meters (in cities of less than 30 000 inhabitants).⁹⁷

The legislation provides for no grounds to justify a failure to ensure accessibility. The statutory duties are absolute. The case law now explicitly and strongly acknowledges this. The civil court of last instance, the Supreme Court of Cassation, has produced in 2008 a strong line of consistent decisions holding the local government of the second largest Bulgarian city liable for discrimination against people with physical disabilities because of inaccessible urban environment and transportation.⁹⁸ The Court repealed a number of lower court decisions that had refused to acknowledge a breach of discrimination law because the authorities had taken some measures.

The Supreme Court rejected this, holding that the initial measures taken by the authorities did not alter the fact that they had failed to achieve accessibility as a result. The very fact of a lacking suitable environment and of existence of architectural barriers constituted discrimination. The Court expressly holds that the authorities' discharge of their accessibility duties was to be measured against the extent to which architectural barriers were overcome *in reality*. What mattered were actions that produced a *real* result. Unlawful omission was at hand where certain actions were carried out but failed to *result* in accessibility. The undertaking of *some* measures was legally irrelevant because the law did not require municipalities to *make efforts* for an accessible environment but charged them to *secure* such an environment. This strong line of Supreme Court decisions has changed the case law of the lower courts in Plovdiv.

⁹¹ Art. 32.

⁹² Art. 33, Integration of Persons with Disabilities Act.

⁹³ Art. 34, Integration of Persons with Disabilities Act.

⁹⁴ Art. 38, Integration of Persons with Disabilities Act.

⁹⁵ Art. 168.

⁹⁶ Art. 220, Organisation of Territory Act.

⁹⁷ Art. 31.

⁹⁸ Decision N 1301 in civil case N 5117/2007. Decision N 556 in civil case N 1514/2007; Decision N 589 in civil case N 1728/2007; Decision N 1158 in civil case N 5162/2007; Decision N 1286 in civil case N 3371/2007.

As a result, the Plovdiv Appeals Court acknowledged in a remanded case that the authorities had unlawfully omitted to act to achieve the result, even though they had taken a number of measures.⁹⁹

The equality body too has taken a strong stance on accessibility. It has ruled that a lack of financial resources cannot be a justification for inaccessibility, nor can a lack of financial resources itself be justified because there was sufficient legal basis for the authorities to secure the necessary funds, and they had sufficient powers to do so.¹⁰⁰

The body instructed the Minister of Finance and all municipality mayors to budget the necessary monies to eliminate architectural barriers.¹⁰¹ It sanctioned the Minister of State Administration and Administrative Reform with a fine of EUR 1000 for failing to make accessible a polling station, with the same set of reasons.¹⁰² It instructed the Minister of Justice to reorganise the building of the Sofia District Court, finding that its inaccessibility constituted discrimination.¹⁰³

The body imposed a fine of EUR 500 on the Social Assistance Agency for keeping inaccessible its building, expressly holding that not only proprietors of public buildings, but also organisations that use and manage such buildings are bound by the duty to make them accessible.¹⁰⁴ The body ordered the agency to stop its omission, stipulating a 3-months timeline for the agency to report on the action it has taken.

h) 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.

⁹⁹ Decision N 427 in civil case N 1064/2008.

¹⁰⁰ Decision N 60 of 08.04.2008.

¹⁰¹ Ibid.

¹⁰² Decision N 45 of 27.02.2008.

¹⁰³ Decision N 39 of 25.02.2008.

¹⁰⁴ Decision N 171 in case 158/2008.

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.¹⁰⁵

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.

Under the Civil Servant Act, quotas for persons with permanent disabilities are provided for.¹⁰⁶ Authorities with more than 50 staff are bound to designate at least 2% of all positions for such people.¹⁰⁷

Authorities with staff between 26 and 50 are bound to designate at least one position.¹⁰⁸ Candidates for those positions compete only with other persons with disabilities.¹⁰⁹

The *Strategy to Secure Equal Opportunities for People with Disabilities 2008-2015* and the *Action Plan to Secure Equal Opportunities for People with Disabilities 2008-2009*¹¹⁰, as well as the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*¹¹¹ envisage the following non-individualised reasonable accommodation measures to be undertaken by different government institutions for persons with disabilities:

- a) Securing physical access to public buildings (schools, kindergartens, universities, theatres, restaurants, hospitals, institutions, etc.), housing, open spaces and workplaces, transportation, information and communications;
- b) Providing specialized public transport;
- c) Programmes to secure suitable workplaces;
- d) Maintaining a government-sponsored internet portal site for persons with disabilities;
- e) Adapting school infrastructure for children with disabilities;
- f) Providing social services in the community for children with disabilities;
- g) Appointment and additional training of a sufficient number of resource teachers in mainstream schools;
- h) Provision of auxiliary equipment.

¹⁰⁵ Art. 333 (1.2-3).

¹⁰⁶ Art. 9a.

¹⁰⁷ Art. 9a (1.1), Civil Servant Act.

¹⁰⁸ Art. 9a (1.2), Civil Servant Act.

¹⁰⁹ Art. 9a (2), Civil Servant Act.

¹¹⁰ Available at: <http://www.mlsp.government.bg/bg/docs/Plan-2008-2009.doc> (in Bulgarian).

¹¹¹ Available at:

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



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.¹¹² 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.¹¹³ 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.¹¹⁴

The terms and conditions of employment in those sheltered facilities are to be determined by the government.¹¹⁵ 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.¹¹⁶ Under this law, such businesses are eligible for government subsidies based on approval of particular projects.¹¹⁷

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.¹¹⁸ 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.¹¹⁹ 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.¹²⁰

¹¹² Art. 36 (2.15).

¹¹³ Art. 22.

¹¹⁴ Art. 316.

¹¹⁵ Ibid.

¹¹⁶ Art. 28 (1).

¹¹⁷ Art. 28 (2).

¹¹⁸ EUMAP, Rights of People with Intellectual Disabilities: Bulgaria 2005, http://www.eumap.org/topics/inteldis/reports/national/bulgaria/id_bul.pdf.

¹¹⁹ Ibid.

¹²⁰ 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.¹²¹ Non-nationals, however, are protected from discrimination based on nationality only insofar as such discrimination has no basis in primary legislation.¹²² 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.¹²³

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.¹²⁴ 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.¹²⁵

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)?

¹²¹ Protection Against Discrimination Act, art. 3 (1).

¹²² Protection Against Discrimination Act, art. 7 (1.1).

¹²³ Art. 26 (2) of the Constitution.

¹²⁴ Art. 3 (2), Protection Against Discrimination Act.

¹²⁵ 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.



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?

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.¹²⁶ 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.¹²⁷ 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.¹²⁸ 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.¹²⁹ The public sector is governed in the same way as the private one.

¹²⁶ Contracts and Obligations Act, art. 45 in conjunction with art. 49.

¹²⁷ Protection Against Discrimination Act, art. 8.

¹²⁸ Protection Against Discrimination Act, art. 6.

¹²⁹ Ibid.



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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

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,¹³⁰ providing for an exception for age only for purposes of pensions in general, including occupational ones.¹³¹

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.¹³² 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.¹³³ 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.¹³⁴

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.¹³⁵

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.

¹³⁰ Ibid.

¹³¹ Art. 7 (1.8).

¹³² Art. 243 (4).

¹³³ Art. 243 (6).

¹³⁴ Ibid.

¹³⁵ 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.¹³⁶ 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,¹³⁷ 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.¹³⁸

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 and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education is favoured and supported.

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.¹³⁹ 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.¹⁴⁰

¹³⁶ Ibid.

¹³⁷ Art. 7 (1.8).

¹³⁸ Art. 6.

¹³⁹ Ibid.

¹⁴⁰ 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).

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.¹⁴¹ The appeal court, however, repealed this judgment.

The court explicitly confirmed that there was separation on ethnic grounds but found that it was not ‘forced’ because it was “not a consequence of factors outside of the students’ will and did not occur against their will – it did not result from legislation or administrative decision”. The court held the students were enrolled in the school as a result of free will (theirs and their parents’). It, however, found that the students suffered indirect discrimination because the school curricula and processes did not positively secure them an equal opportunity to learn by taking account of their ethnic and linguistic differences. The court invoked *Thlimmenos* to declare that different treatment was required to account for different situations, as well as like treatment of like cases.¹⁴² The Supreme Court of Cassation, the final instance, confirmed this decision.¹⁴³

Two other cases were lost.¹⁴⁴ 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.¹⁴⁵

Patterns of educational exclusion/ segregation of children with disabilities include: 1) children at home, or in the street (Roma children with disabilities) with no access to school at all; 2) children who dropped out from some form of schooling; 3) children who visit day care centres as a substitute for schooling and are taught rudimentary skills there; 4) children in social care institutions where the vast majority receive no schooling at all, and a mere 6% are schooled under substandard curricula inside the institution by special school teachers who visit for lessons; 5) children in special schools for children with hearing, sight or physical disabilities, and in separate special schools for children with intellectual disabilities where children are taught a substandard curriculum.

The authorities’ approach to inclusive education is fragmentary, superficial, inconsistent, and discriminatory to certain groups of students with disabilities.

¹⁴¹ 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.

¹⁴² Decision of 27.02.2007 of the Sofia City Court, civil case N 3139 of 2005.

¹⁴³ Decision N 723 of 01.08.2008, civil case N 6402 of 2007.

¹⁴⁴ 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). The first case was brought by Roma students studying in exclusively or predominantly Romani classes in school. The courts in effect found that the authorities had done nothing to create this situation, and could do nothing about it because the right to choice of school (of non-Roma parents/ students) was absolute and could not be interfered with. The second case was brought by the European Roma Rights Centre alleging that an all-Roma school was segregated (as well as substandard and ill-adapted to deal with the students’ language differences). The courts found that the authorities did not ‘force’ any of the students to study in that particular school, therefore, there was no segregation, or any other breach of equality law.

¹⁴⁵ 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.

While under the legislation formally inclusive education is the rule,¹⁴⁶ the regulation lacks the necessary coherence and specificity to ensure real implementation in practice. For instance, while the rules provide that special education may be employed only after all possibilities for inclusive education are exhausted, there is no legal definition of what it is to exhaust all possibilities for inclusive education. For instance, a lack of adequate planning by the authorities, including no provision of adequate financial resources, may mean that there is no technical possibility to adapt the environment or engage specialists.

In this way the legislation allows the authorities' own failures to result in children with disabilities being segregated in special schools. Under the legislation, institutionalized children may only study in special schools.¹⁴⁷ Children with profound intellectual disability are implicitly excluded from any schooling.¹⁴⁸ While children with mild intellectual disability are no longer to be sent to special schools under new secondary legislation,¹⁴⁹ there are no rules to govern the cases of children with such disabilities who already are in special schools. There are no adapted state educational requirements (specification of the requisite academic achievements) adopted for children with developmental disability.¹⁵⁰

In practice, inclusive education is thwarted by an inefficient institutional infrastructure, including a lack of planning, resource allocation, data collection and know-how, and sometimes, by vested interests in maintaining special schools. There is inadequate accessibility in terms of architecture and communications. Special (supportive) teachers in mainstream schools are not enough and lack adequate competence. There is no unified methodology to teach children with developmental disabilities, or suitable teaching materials. Children with moderate and severe intellectual disability are predominantly sent to special schools. The various authorities (including the ministries of education, health and labour) have inadequate coordination. They even lack an adequate shared understanding that they need coordination. Officials are unaware that their expertise is wanting. They share a depreciating attitude towards the capacity of children with mental disabilities to learn. In late 2007, the Minister of Labour said that nothing more could be achieved – those children could be taken care of, they could be fed and clothed, but this is all they could be.

Formal rules and policies for inclusive education, and what implementation there is of those, are due to external pressure. For instance, new secondary legislation on students with special educational needs was drafted because NGOs took the authorities to court over the lacking environment for inclusive education. The adoption after nearly 3 years of this legislation is likely the result of the 2008 decision against Bulgaria by the European Committee of Social Rights. The Committee found that Bulgaria discriminated against children with mental disabilities by limiting their educational opportunities.¹⁵¹ Parents mobilizing to advocate for their children's rights are also a factor.

¹⁴⁶ The National Education Act and secondary legislation on the education of students with special educational needs - a new Ordinance N 1 of 23.01.2009 was recently adopted.

¹⁴⁷ Ordinance N 1 of 23.01.2009.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC41Merits_en.pdf.



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

- a) *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.¹⁵² 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.¹⁵³

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

Under the Protection Against Discrimination Act, there is an explicit exception for the setting of maximum age requirements for access to crediting under the Students and Doctoral Students Crediting Act.¹⁵⁴ The Students and Doctoral Students Crediting Act itself sets a maximum age of less than 35 for eligibility.¹⁵⁵ Further, under the Insurance Code, life and accident insurance contracts are null and void where covering the death of a child younger than 14 or of a person under plenary guardianship, or abortion risks, or stillbirth.¹⁵⁶ This exclusion of abortion or stillbirth risks may have a disparate impact on people with disabilities. The law imposes no restriction on the use of age or disability as a criterion for differentiation in any of these cases.

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 and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

The Protection Against Discrimination Act implicitly applies fully to all aspects of this field with respect to all grounds.¹⁵⁷

¹⁵² Ibid.

¹⁵³ *Angel Manin and Marin Kirkovski v. Protection Against Discrimination Commission*, Decision № 451 of 14.01.08 in case № 10322/2007, Supreme Administrative Court.

¹⁵⁴ Art. 7 (1.12), Protection Against Discrimination Act.

¹⁵⁵ Art. 3 (1.1).

¹⁵⁶ Art. 230 (3).

¹⁵⁷ Ibid.



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.

Under the Regulations on the Implementation of the Integration of Persons with Disabilities Act, people with permanent disabilities and over 90% lost working ability, as well as children wheelchair users with permanently reduced ability for social adaptation are entitled to a one-off assistance payment for purposes of reorganizing housing, provided that their family's income is below a certain threshold.¹⁵⁸

Under the Regulations on the Implementation of the Social Assistance Act, single people older than 70 years are entitled to a monthly payment for municipal housing rent provided that their income is below a certain threshold and are officially party to a tenancy contract with the municipality.¹⁵⁹ Under the Ordinance on the Terms and Procedure for Management and Disposal of Municipal Housing on the Territory of the Capital Municipality, people with long-term reduced working ability over 90% are accorded priority in access to municipal housing (5 points – as much as families with two children).¹⁶⁰ An additional room of municipal housing may be provided where a family member requires another person's assistance as documented by a medical authority diagnosing a disability.¹⁶¹

¹⁵⁸ Art. 50 (1).

¹⁵⁹ Art. 14 (1.2).

¹⁶⁰ Art. 8 (2.4).

¹⁶¹ Art. 17 (4.1).



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.¹⁶² 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.¹⁶³ 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;”.¹⁶⁴

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? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

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

¹⁶² Art. 7 (1.2).

¹⁶³ Art. 7 (1.3).

¹⁶⁴ 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.¹⁶⁵ “Ability” for recruitment purposes is required to be medically certified.¹⁶⁶ 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.¹⁶⁷ Persons who do not comply with those requirements are not even allowed to apply.¹⁶⁸ Applicants must be “clinically healthy, not suffer from mental illnesses, and be medically able”.¹⁶⁹ The requisite healthiness and ability is to be certified by an expert medical commission.¹⁷⁰ 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 (e.g. 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.

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).

¹⁶⁵ Art. 116, Defence and Armed Forces of the Republic of Bulgaria Act.

¹⁶⁶ Art. 13, Professional Army Service Regulations.

¹⁶⁷ Art. 179.

¹⁶⁸ Art. 3 (1), Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.

¹⁶⁹ Art. 3 (3.3), Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.

¹⁷⁰ Art. 4, Decree on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.



- 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?)

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.¹⁷¹ It makes a significant exception, however, for differential treatment based on nationality that is provided for under primary legislation.¹⁷² 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.¹⁷³

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.¹⁷⁴

- b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

The law makes an exception for any differential treatment based on nationality provided that such treatment is stipulated by another piece of primary legislation.¹⁷⁵

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 (e.g. Case C-267/06 Maruko) 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.

¹⁷¹ Art. 4 (1).

¹⁷² Art. 7 (1.1).

¹⁷³ Art. 7 (1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

¹⁷⁴ 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.

¹⁷⁵ Art. 7 (1.1), Protection Against Discrimination Act.



The Protection Against Discrimination Act implicitly bans such discrimination based on marital status. This is so because the Act expressly bans any discrimination in any field, including employment, on any ground, including family 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,¹⁷⁶ considering the specific dangers for employees with reduced work capability.¹⁷⁷ 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.

¹⁷⁶ Art. 16 (1.2a).

¹⁷⁷ Art. 16 (1.3).

In all but two cases where the Protection Against Discrimination Act makes exceptions 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.¹⁷⁸

The first exception for age discrimination under the Protection Against Discrimination Act, which is not subject to the proportionality requirement, is for pension ages – it requires no objective justification for age-based different treatment for purposes of entitlement to pensions, including occupational pensions.¹⁷⁹ 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.

The second exception which is not subject to the proportionality requirement is for the setting of a maximum age for eligibility for crediting under the Students and Doctoral Students Crediting Act.¹⁸⁰

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.¹⁸¹ 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.¹⁸² 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.¹⁸³ 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.¹⁸⁴

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)?

¹⁷⁸ Art. 7 (1.5-6) and (1.11).

¹⁷⁹ Art. 7 (1.8).

¹⁸⁰ Art. 7 (1.12).

¹⁸¹ Art. 7 (1.5).

¹⁸² Art. 7 (1.6).

¹⁸³ Art. 7 (1.11).

¹⁸⁴ Art. 7 (1.8).

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.¹⁸⁵

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.

Under the Labour Code, an employer may assist young employees.¹⁸⁶ Under this Code, underage employees are entitled to special protection.

The minimal age for access to employment is 16 years.¹⁸⁷ 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.¹⁸⁸ 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.¹⁸⁹ Further, the employment of any such individual must be authorised by the authorities.¹⁹⁰ Similar requirements are provided for in the case of 16-to-18-year-olds too.¹⁹¹ 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.¹⁹² 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.¹⁹³ 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.¹⁹⁴ Underage employees may not work more than 35 hours a week, or 7 hours a day, including vocational training time.¹⁹⁵ Such employees are entitled to no less than 26 working days annual leave.¹⁹⁶

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.¹⁹⁷ 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.¹⁹⁸

Under the Employment Encouragement Act, further, older workers are provided special conditions.

¹⁸⁵ Ibid.

¹⁸⁶ Art. 294.6.

¹⁸⁷ Art. 301 (1).

¹⁸⁸ Art. 301 (2), Labour Code.

¹⁸⁹ Art. 302 (1), Labour Code.

¹⁹⁰ Art. 302 (2), Labour Code.

¹⁹¹ Art. 303, Labour Code.

¹⁹² Art. 304, Labour Code.

¹⁹³ Art. 305 (1), Labour Code.

¹⁹⁴ Art. 305 (2), Labour Code.

¹⁹⁵ Art. 305 (3), Labour Code.

¹⁹⁶ Art. 305 (4), Labour Code.

¹⁹⁷ Art. 36.

¹⁹⁸ Art. 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).



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.¹⁹⁹

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.²⁰⁰

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.²⁰¹ 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.

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.²⁰² 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.²⁰³

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.²⁰⁴ Nursing women are further entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ Employers are under a duty to assign workplaces and jobs suitable for nursing women each year.²⁰⁸ Further, an employer may not send a mother of a child not older than 3 years on a business trip without her written consent.²⁰⁹ A mother of a child not older than 6 years is entitled to work from home.²¹⁰ 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.²¹¹ 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.

¹⁹⁹ Art. 55a.

²⁰⁰ Art. 55b.

²⁰¹ Art. 222 (3), Labour Code.

²⁰² Art. 53-53a.

²⁰³ Art. 53a (2).

²⁰⁴ Art. 307 (2) and (3), Labour Code.

²⁰⁵ Art. 309 (1), Labour Code.

²⁰⁶ Ibid.

²⁰⁷ Art. 309 (2), Labour Code.

²⁰⁸ Art. 309 (4), Labour Code.

²⁰⁹ Art. 310, Labour Code.

²¹⁰ Art. 312 (1), Labour Code.

²¹¹ Art. 312 (2), Labour Code.

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.²¹² Where a mother is not in a position to avail herself of these rights, the father can exercise them.²¹³

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 in effect²¹⁴ objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary. 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 retirement²¹⁵, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.²¹⁶

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).

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

- 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.²¹⁷

²¹² Art. 312 (3), Labour Code.

²¹³ Art. 313, Labour Code.

²¹⁴ 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 arbitrary but generally rational, *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.

²¹⁵ 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.

²¹⁶ Art. 7 (1.6).

²¹⁷ Social Security Code, art. 68.

The relevant ages are different for women and men.²¹⁸

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.

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 60.²¹⁹ As an exception, they can start collecting their occupational pensions 5 years earlier provided that this is provided for under a collective agreement.²²⁰ 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,²²¹ and the police,²²² 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.²²³

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,²²⁴ or special laws, such as those applicable to the police and army as mentioned above.

²¹⁸ 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."

²¹⁹ Social Security Code, art. 243 (4).

²²⁰ Social Security Code, art. 243 (6).

²²¹ 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.).

²²² Ministry of Interior Act, art. 245 (1). The limit is 60 years.

²²³ While there is currently a new draft Defence and Armed Forces of the Republic of Bulgaria Act pending in Parliament since December 2008, it provides for the same maximum ages (art. 170 (1)). It also provides maximum ages for admission of new recruits (art. 151 (1)). For reserve service people, there are separate maximum ages (art. 288 (1)).

²²⁴ See above a). and footnote 137.



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.²²⁵ 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.

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.²²⁶ 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.²²⁷

- 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.²²⁸ 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.

²²⁵ Labour Code, art. 328.10.

²²⁶ Art. 329 (1).

²²⁷ Labour Code, art. 328.10.

²²⁸ Art. 222 (3).



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;²²⁹
- 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;²³⁰
- special protection measures for pregnant women and mothers that are provided for by law;²³¹
- different treatment of persons with disabilities in training or education aimed at meeting their special educational needs in order to equalise their opportunities;²³²
- 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;²³³
- special measures for the benefit of disadvantaged persons or groups defined on protected grounds aimed at equalising their opportunities, as far as and as long as such measures are necessary;²³⁴
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;²³⁵
- 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;²³⁶
- 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.²³⁷

²²⁹ Art. 7 (1.3).

²³⁰ Art. 7 (1.4).

²³¹ Art. 7 (1.7).

²³² Art. 7 (1.10).

²³³ Art. 7 (1.13).

²³⁴ Art. 7 (1.14).

²³⁵ Art. 7 (1.15).

²³⁶ Art. 7 (1.16).

²³⁷ Art. 7 (1.17).

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;²³⁸ 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;²³⁹ 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;²⁴⁰ special protection measures for pregnant women and mothers that are provided for by law;²⁴¹ special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;²⁴² 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;²⁴³ 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.²⁴⁴ 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.²⁴⁵ The Act requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.²⁴⁶

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.²⁴⁷ By contrast, preferential measures based on other grounds, excluded from the constitutional equality clause, such as disability or age, are constitutional.²⁴⁸ 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.

²³⁸ Art. 7 (1.10).

²³⁹ Art. 7 (1.13).

²⁴⁰ Art. 7 (1.14).

²⁴¹ Art. 7 (1.7).

²⁴² Art. 7 (1.15).

²⁴³ Art. 7 (1.16).

²⁴⁴ Art. 7 (1.17). The law does not specify the measures allowed. Any measure falling into that category is excepted.

²⁴⁵ Art. 11 (1).

²⁴⁶ Art. 11 (2).

²⁴⁷ Constitutional Court ruling N 14 of 1992.

²⁴⁸ 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 people with disabilities 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.²⁴⁹ Under the Integration of Persons with Disabilities Act, at least half of those workplaces are to be reserved for people with permanent disabilities.²⁵⁰

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.²⁵¹ 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 2005-2009.²⁵² 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”.

²⁴⁹ Art. 315 (1).

²⁵⁰ Art. 27.

²⁵¹ Available at: http://www.socialinclusion-bg.net/documents/sibg/bg/Jim_Bulgaria.pdf.

²⁵² Available at: <http://www.mlsp.government.bg/bg/docs/Programa-MLSP-sait.doc>.

The *National Strategy for the Child 2008-2018*,²⁵³ 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 enrolment 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 to Secure Equal Opportunities for People with Disabilities 2008-2009*²⁵⁴ and the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*.²⁵⁵ Another policy document providing for a general framework for inclusion of persons with disabilities in employment is the *Employment Strategy 2004-2010*,²⁵⁶ 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:

²⁵³ Available at: <http://lex.bg/laws/ldoc.php?IDNA=2135579275>.

²⁵⁴ Available at: <http://www.mlsp.government.bg/bg/docs/Plan-2008-2009.doc>.

²⁵⁵ Available at:

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

²⁵⁶ 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 2008-2010²⁵⁷ 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; providing for access to education for uneducated adult refugees.
- 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; dissemination of information on refugees' social assistance rights.
- Health care – Training of GPs and dentists for work with refugees; introduction of mediators for interaction with refugees in the work of health care providers; inclusion of refugees in national prophylactics and prevention programmes; dissemination of health information materials; providing all refugees who need it with access to HIV/Aids and tuberculosis prevention, diagnostics, treatment, care and support services.
- Programs for refugees with special needs – Programs for refugees victims of torture and sexual violence, victims of trafficking, refugees of age and with disabilities.

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

²⁵⁷ Available at: <http://www.mlsp.government.bg/bg/docs/Strategia.doc>.



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.²⁵⁸

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.

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.

²⁵⁸ 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.



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)

In relation to each, of the following questions please note whether there are different procedures for employment in the private and public 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)?

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

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.²⁵⁹ However, it can award no compensation to a victim. Both procedures are universally applicable to both the public and private sectors.

Under the law, litigants are free to represent themselves in both the judicial and quasi-judicial procedures.²⁶⁰ 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.

On a positive note, both the court and equality body procedures are completely exempt from costs, both state fees and expenses.²⁶¹

There are no comprehensive official statistics on discrimination cases. For discrimination cases in court, there are no official statistics at all.

²⁵⁹ 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.

²⁶⁰ 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.

²⁶¹ Protection Against Discrimination Act, art. 53 and art. 75 (2).



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,²⁶² and for the equality body, three years²⁶³.

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*

Under the Protection Against Discrimination Act, public interest NGOs and trade unions may join proceedings brought by a victim in their support, for which they don't formally need the complainant's consent.²⁶⁴ They can, further, initiate proceedings themselves without an individual complainant where the rights of many parties are affected.²⁶⁵ 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.²⁶⁶ Therefore, any one may initiate a case in support of a particular victim, or in the public interest.

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.²⁶⁷ Class actions are possible and NGOs and trade unions can intervene in their support too.²⁶⁸

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).

²⁶² Protection Against Discrimination Act, art.

²⁶³ Protection Against Discrimination Act, art. 52 (1).

²⁶⁴ 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.

²⁶⁵ Art. 72 (3).

²⁶⁶ Art. 50.3.

²⁶⁷ Art. 71 (2).

²⁶⁸ Protection Against Discrimination Act, art. 72.

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.²⁶⁹

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.

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.²⁷⁰ 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.²⁷¹ 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.²⁷² 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.*

²⁶⁹ Art. 9.

²⁷⁰ Art. 5.

²⁷¹ § 1.3 Additional Provision.

²⁷² Ibid.

Under the Protection Against Discrimination Act, the equality body has powers to impose financial sanctions between the equivalents of EURO 125 and 1250, amounts that would be dissuasive to the majority.²⁷³ 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.²⁷⁴ 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.²⁷⁵

Under national law, the civil courts do not impose fines. They only award compensation for damages.

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

There is no maximum amount of compensation.²⁷⁶ 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 EUR 250 per person. In some cases, the courts have awarded as much as the equivalent of EUR 1500-2500. In an exceptional line of decisions concerning urban inaccessibility, the Supreme Court of Cassation has awarded EUR 5 250 each to claimants with disabilities.²⁷⁷

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.

²⁷³ Art. 78-80.

²⁷⁴ Art. 81.

²⁷⁵ Art. 76, Protection Against Discrimination Act.

²⁷⁶ 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.

²⁷⁷ For details, see above section 0.3, Case Law.

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) for the promotion of equal treatment, 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?(Body/bodies that corresponds to the requirements of article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so)*

Under the Protection Against Discrimination Act, the Protection Against Discrimination Commission is charged with promoting and enforcing non-discrimination as a specialised equality body.²⁷⁸

- 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.²⁷⁹ 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.²⁸⁰ The Protection Against Discrimination Commission is accountable to Parliament only. It reports to Parliament annually.²⁸¹

- 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.²⁸² It can initiate its own proceedings at its discretion, in all fields and on all grounds, against any perpetrator.²⁸³ It can review and give opinions on draft legislation.²⁸⁴

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

²⁷⁸ Art. 40.

²⁷⁹ Ibid.

²⁸⁰ Art. 40 (3), Protection Against Discrimination Act.

²⁸¹ Art. 40 (5), Protection Against Discrimination Act.

²⁸² Protection Against Discrimination Act, art. 47.

²⁸³ Ibid.

²⁸⁴ Ibid.

The Protection Against Discrimination Commission is, further, charged with assisting victims of discrimination,²⁸⁵ carrying out independent research and publishing independent reports.²⁸⁶ It can also make recommendations to public authorities, including for legislative change.²⁸⁷

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.²⁸⁸ It also has standing to intervene in court proceedings as an interested party.²⁸⁹ However, in practice it has never initiated a lawsuit, and has only joined proceedings instituted by others in very few exceptional cases (urban accessibility for disabled people cases).

f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions)*

The Protection Against Discrimination Commission is a quasi-judicial institution. Its decisions make findings on points of law, as well as of fact, and are formally binding. The proceedings before it are public, with a hearing of both parties. The Commission has the power to impose sanctions, including fines, and 'soft' penalties, such as public apology or publication of (information about) its decision. The Commission's decisions are subject to two-instance judicial review by the Supreme Administrative Court. The Commission is a relatively new body and is still in the process of establishing its authority. It perseveres to enforce the binding nature of its decisions, including by imposing further sanctions on non-performing respondents.

g) *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.²⁹⁰ However, considering its members selection by Parliament and the President, it might not be free from political dependencies.

h) *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.

²⁸⁵ 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. It has initiated no court action to date.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Art. 40 and 47.



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.



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.²⁹¹

²⁹¹ 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.

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 inclusive 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 reportedly initiated.

- 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.²⁹² A major effort is required to ensure that all laws and regulations are brought into conformity with the principle of equality.²⁹³

²⁹² 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 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.

²⁹³ 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. 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.²⁹⁴ 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 minorities²⁹⁵. 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;²⁹⁶ carrying out studies; giving opinions on draft legislation; collecting and keeping data on public and private educational integration initiatives.²⁹⁷ The Council is comprised of public officials, university professors, public organizations' representatives and NGOs.²⁹⁸

²⁹⁴ 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.

²⁹⁵ 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.

²⁹⁶ Art. 1-2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science establishing CCECSEM.

²⁹⁷ Art. 2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science.

²⁹⁸ 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.²⁹⁹ The Council is charged with developing and funding projects promoting ethnic minority students equal access to quality education.³⁰⁰ It fundraises via donations by donor institutions, national, foreign or international, and a subsidy from the Ministry of Education's budget.³⁰¹

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.³⁰²

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**.³⁰³ Its tasks include strategizing and planning against poverty and social isolation.³⁰⁴ 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**.³⁰⁵ Specifically to people with disabilities, this directorate organizes the activities of the National Council on Integration of People with Disabilities.³⁰⁶ It is also in charge of strategizing about government-NGO cooperation in the field of integration of vulnerable groups.³⁰⁷

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.³⁰⁸

²⁹⁹ Art. 1 of Decree N 4 of the Council of Ministers of 11.01.2005 establishing CEICSEM.

³⁰⁰ Art. 2 of Decree N 4 of the Council of Ministers of 11.01.2005.

³⁰¹ Art. 9 of Decree N 4 of the Council of Ministers of 11.01.2005.

³⁰² 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.

³⁰³ 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.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ 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.³⁰⁹ 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.³¹⁰ 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.³¹¹ 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.³¹²

The *National Council on Integration of People with Disabilities* within the government is a similar consultative body charged with **disability** equality policy.³¹³ 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.³¹⁴

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.³¹⁵ 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.³¹⁶

³⁰⁹ Information published at the Ministry of Labour and Social Policy's Internet site at <http://www.mlsp.government.bg/equal/policy.asp>, in Bulgarian.

³¹⁰ Ibid. CCEOMW was established in 2003 (ibid.).

³¹¹ Art. 1, 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.

³¹² Art. 2, Regulations on the Structure and Work Organisation of the National Council on Equality Between Women and Men.

³¹³ Art. 2, Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, adopted 17.12.2004, establishing NCIPD.

³¹⁴ Art. 3, Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities.

³¹⁵ Art. 2 (1), Structural Regulations of the Agency for People with Disabilities, in force as of 1 January 2005.

³¹⁶ Ibid.



There is no governmental structure to deal with sexual orientation policy. There is also no department dealing with equality/non-discrimination issues relating to religion/ belief.



ANNEX

1. Table of key national anti-discrimination legislation
2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Bulgaria

Date 27 March 2009

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, http://lex.bg/bg/laws/ldoc/2135472223 (in Bulgarian)	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

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
					and promote equality; judicial remedy; class actions and <i>actio popularis</i> claims; NGO interveners; exemption from costs.
Integration of Persons with Disabilities Act, http://lex.bg/bg/laws/ldoc/2135491478 (in Bulgarian)	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

Bulgaria

Date 27 March 2009

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	N/A
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 Convention on Economic, Social and Cultural Rights	Yes	Yes		No	Yes

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?
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	Yes	No		Signed but not ratified.	When ratified.