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

COUNTRY REPORT 2012

BULGARIA

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State of affairs up to 1st January 2013

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TABLE OF CONTENTS

INTRODUCTION 4
0.1 The national legal system 4
0.2 Overview/State of implementation 5
0.3 Case-law 9
1 GENERAL LEGAL FRAMEWORK 14
2 THE DEFINITION OF DISCRIMINATION 15
2.1 Grounds of unlawful discrimination 15
2.1.1 Definition of the grounds of unlawful discrimination within the Directives 15
2.1.2 Multiple discrimination 19
2.1.3 Assumed and associated discrimination 21
2.2 Direct discrimination (Article 2(2)(a)) 21
2.2.1 Situation Testing 22
2.3 Indirect discrimination (Article 2(2)(b)) 24
2.3.1 Statistical Evidence 27
2.4 Harassment (Article 2(3)) 29
2.5 Instructions to discriminate (Article 2(4)) 31
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78) 32
2.7 Sheltered or semi-sheltered accommodation/employment 44
3 PERSONAL AND MATERIAL SCOPE 46
3.1 Personal scope 46
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) 46
3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43) 46
3.1.3 Scope of liability 47
3.2 Material Scope 47
3.2.1 Employment, self-employment and occupation 47
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? 48
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c)) 48
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)) 49
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)) 49
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43) 50

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43) 50
3.2.8 Education (Article 3(1)(g) Directive 2000/43) 50
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43) 54
3.2.10 Housing (Article 3(1)(h) Directive 2000/43) 55
4 EXCEPTIONS 57
4.1 Genuine and determining occupational requirements (Article 4) 57
4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78) 57
4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)..58
4.4 Nationality discrimination (Art. 3(2) 59
4.5 Work-related family benefits (Recital 22 Directive 2000/78) 60
4.6 Health and safety (Art. 7(2) Directive 2000/78)..61
4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78) 61
4.7.1 Direct discrimination...61
4.7.2 Special conditions for young people, older workers and persons with caring responsibilities 63
4.7.3 Minimum and maximum age requirements 65
4.7.4 Retirement 66
4.7.5 Redundancy...68
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) 69
4.9 Any other exceptions 69
5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)71
6 REMEDIES AND ENFORCEMENT 78
6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)...78
6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78) 79
6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)83
6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)...84
6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78) 85
7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)..87
8 IMPLEMENTATION ISSUES...91
8.1 Dissemination of information, dialogue with NGOs and between social partners 91
8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78) ..93
9 CO-ORDINATION AT NATIONAL LEVEL 95
ANNEX 99
ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION 100
ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS 103

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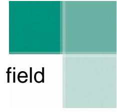
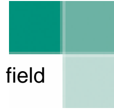


ANNEX 3: PREVIOUS CASE-LAW 106

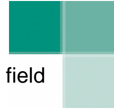


INTRODUCTION

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 among 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 anti-discrimination and gender 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. For details on this, see section 8.2 b), in particular footnotes 322 and 323, of this report. Very limited and insufficient effort has been made to harmonize 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.

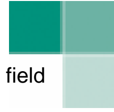
This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly 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 bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

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

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 harmonize the legislation so as to ensure that the Protection Against Discrimination Act prevails over other conflicting norms. For non-exhaustive details on laws in need of harmonization, see section 8.2 b), in particular footnotes 322 and 323, of this report.

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.[1]

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.[2] 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. Currently, following legislative amendments, Protection Against Discrimination Commission (PADC) decisions are subject to appeal first before the Administrative Court of Sofia City (as appellate, or second, instance) and then the Supreme Administrative Court (as cassation, or third, instance).

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.

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’.[3] It thus implies that segregation may be chosen, i.e. that segregated persons may have waived there 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.[4]

The equality body’s case law is developing, especially in the fields of physical accessibility and media hate speech. The body has ruled a number of times that

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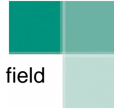
[1] For instance, civil court decisions: Decision № 97 of 13.12.2004, case № 365/2004 of Radnevo District Court; Decision of 19.12.2006, case № 2756/2006 of Sofia District Court; Decision of 12.07.2004, case № 1184/2004 of Sofia Regional Court; Decision of 19.08.2004, case № 1262/2004 of Sofia District Court; Decision of 19.12.2006, case № 2756/2006 of Sofia District Court. Decisions of the Supreme Administrative Court: Decision № 11421 of 19.11.2007, case № 5604/2007; Decision № 12117 of 3.12.2007, case № 8044/2007; Decision № 4752 of 15.05.2007, case 11478/2006; Decision № 11295 of 16.11.2007, case № 6407/2007; Decision № 13393 of 28.12.2007, case № 8083/2007; Decision № 7811 of 19.07.2007, case № 1048/2007.

[2] Ibid.

[3] Additional Provision, § 1.6.

[4] D.H. v. Czech Republic, judgment of 13.11.2007; Sampanis v. Greece, judgment of 05.06.2008; Orsus v. Croatia, judgment of 16.03.2010 (GC).



stereotyping negative statements against minorities infringe human dignity and create a hostile/ offensive environment in breach of the law.

The body consistently held that freedom of expression is not absolute and that encouraging intolerance is off limits. The body declared a number of media, newspapers as well as televisions, liable for hate speech which it qualifies as harassment. It ordered those media to introduce effective and specific mechanisms for self-control in order to prevent further dissemination of prejudice. In some cases, the body explicitly stated that preventive measures taken so far by the media were only “formal and declaratory”. In one case it ordered a newspaper to become a party to the media Code of Ethics. The body ordered several individuals found liable for discrimination to publish its rulings against them at their own expense, as well as to publish apologies. In Roma cases, it also ordered media to abstain from further reporting the ethnic identity of persons where irrelevant. The body ordered as a matter of course all media found liable to report to it within a specified time frame on the measures they took to comply with its instructions.

The body systematically relies on international law, including EU 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.[5] 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. 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.

The body’s handling of the shifting burden of proof has also improved. The body increasingly 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 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.

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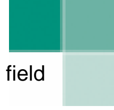
[5] Decision N 37 of 20.02.2008 in case N 116/2007.



However, the equality body has a problematic approach of considering and finding discrimination without a particular ground being alleged or considered, and of using self-devised, 'groundless' forms of discrimination – the so called "discrimination in the exercise of the right to labour" and "harassment at the workplace".[6] The latter form the body introduced in 2008.

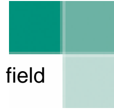
Practically, any mistreatment, regardless of its cause, qualifies as discrimination in that paradigm. Another aspect of this uncontrolled expansion of the legislation's concept is the very broad way in which the body construes the protected ground of 'personal status'. Under its construction, any circumstance 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 prioritizing 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.

A further weak aspect, equality body binding instructions (orders) have a poor record of execution by respondents.[7] In such cases, the body has no formal power, other than to impose further fines.

In 2012, the Supreme Administrative Court's (SAC)[8] case law has continued to show problems related to incorrect interpretations of the law. This Court has held a number of times that, for discrimination to be at hand, a difference of treatment should be based *solely* on a protected ground.[9] This directly contradicts the „mixed motives" standard providing for a finding of discrimination where a protected characteristic was one of the reasons for less favourable treatment. In only one case in 2012 did SAC respect that standard and hold that „discriminatory treatment is at hand regardless of

[6] This has nothing to do with the definition of harassment under the Framework Directive. The point is that PADC applies this concept which is of their own making *without considering any ground* on which the alleged harassment was based – not sexual orientation, not disability, not age. No ground at all. Could be that someone was 'harassed' because of their poor work performance, or their bad attitude, or because of rivalry, or anything. This is certainly not what the Framework Directive, or any other directive had in mind.
[7] Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 006/54/EC (VT/2009/012), BULGARIA, Margarita Ilieva & Desislava Simeonova, April 2010: Focus Group Discussion with Equality Body members and staff.
[8] This court exercises cassation (final instance) judicial review over decisions of the specialized equality body, the Protection Against Discrimination Commission.
[9] Inter alia, Decision N 8277 of 11.06.2012 in case N 3852/2012, final.



whether a protected ground is the only, or one of the reasons for less favourable treatment. The case law, in that respect, remains inconsistent.[10]

Further, SAC has ignored the "irrelevance of intent" standard in some rulings, holding expressly that "treatment [must be] carried out knowingly on one of the grounds".[11] In one case, this court held that a maximum age requirement for access to employment did not constitute discrimination because "that was a condition for all candidates […] and not a personal requirement for [the complainant]", thereby seriously distorting the 'comparable situation' standard.[12]

As mentioned above, SAC has erred by applying the justification formula only relevant for indirect discrimination to cases of less favourable treatment, i.e. direct discrimination. Further, this court has generally refused to refer cases to the ECJ for preliminary rulings even when parties have requested so, on no reasonable grounds, abusing thereby its last-instance immunity from control. SAC also has difficulties working with the burden of proof shift rule, effectively depriving the legislation of an important tool to secure effective justice for victims.

0.3 Case-law

Provide a list of any important case-law in ***2012*** *within the national legal system relating to the application and interpretation of the Directives. (The* ***older case-law mentioned in the previous report should be moved to Annex 3)****. 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 falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

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

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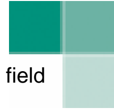
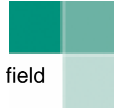
[10] Decision N 274 of 09.01.2012 in case N 1319/2011.
[11] Decision N 8277 of 11.06.2012 in case N 3852/2012, final.
[12] Decision N 7096 of 19.05.2012 in case N 3686/2012, final.



Name of the court: Supreme Administrative Court
Date of decision: 27 December 2012
Name of the parties: Radoslav Stoyanov and Dobromir Dobrev v. Yulian Vouchkov
Reference number: Decision N 16558 in case N 12446/2012
Address of the webpage: --
Brief summary: The Court refused to acknowledge that anti-Gay statements made by a TV presenter, including the expression "perversions", constituted harassment and incitement to discrimination on sexual orientation grounds. The Court's reasons were that those statements did not "target a specific individual" and expressed "the presenter's opinion"; the Court considered that they expressed "disapproval", but not "hatred or aggression". Accordingly, even if they were unwanted, they did not create a hostile or offensive environment. The Court found that it was not proven that the impugned statements could influence the presenter's viewership to discriminate against nonheterosexuals, even though they were broadcast on TV and were subsequently the object of publications in other media, thus reaching a wide range of people. The Court mentions publicity as a factor in the context of a collision between the right to free expression and the right to dignity and non-discrimination, but paradoxically it concludes that the impugned statements "do not provoke self-serving hatred and intolerance". Apparently, the Court implies that where anti-Gay language serves some other purpose than itself it is (possibly) legitimate. It adds that the impugned 'intemperate speech' was lawful because it was aimed at "the manifestation of the acts concerned, and not against their essence". This means that the Court makes legitimate the anti-Gay prejudice that minority sexual orientation should stay hidden.

Name of the court: Supreme Administrative Court
Date of decision: 11 July 2012
Name of the parties: National Health Insurance Fund v. Protection Against Discrimination Commission and Association of Parents of Children Suffering from Phenylketonuria
Reference number: Decision N 10161 in case N 3859/2012
Address of the webpage: --
Brief summary: The Court, as a final instance, confirmed a ruling by the equality body and the lower judicial instance (a three-member panel of the same court) that the National Health Insurance Fund (NHIF) was under a duty to provide special treatment for female *phenylketonuria* patients in the period before pregnancy for – as it does for women with other metabolic genetic disorders, such as diabetes. The case was brought against the NHIF before the equality body by a patients' NGO – the Association of Parents of Children Suffering from Phenylketonuria – over a provision excluding phenylketonuria patients over 18 years of age, including women. The Court held that provision directly discriminatory.

Name of the court Supreme Administrative Court
Date of decision 30 August 2012
Name of the parties Minister of Labour and Social Policy v. Protection Against Discrimination Commission

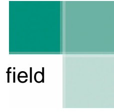


Reference number: Decision N 11111 in case N 5665/2011
Address of the webpage –
Brief summary: The Court held the Minister of Labour and Social Policy liable for discrimination against natural parents of children with permanent disabilities. The breach consisted in his omission to take corrective action as regards legislation (a number of rules, both primary and secondary) treating those parents less favorably than adoptive parents of children with disabilities by not providing for remuneration for their caregiving. Under the impugned legislation, the time natural parents devote to caregiving to their children is not considered for service length calculation purposes, reflecting on their social security rights. The Court reasoned that natural parents, just like adoptive parents, were forced to surrender other employment in order to be caregivers to their children with disabilities. However, unlike adoptive parents, they are entitled to no remuneration for that, and become devoid of sustenance. (Adoptive parents receive such remuneration under contracts they conclude with local government authorities, social assistance bodies, or specially authorized companies.)

The Court ordered the respondent minister to draft legislative amendments, and to present them to the Council of Ministers. The Court recommended to the latter to introduce those in Parliament. No such action has been taken so far. The case was originally brought before the equality body by an NGO representing natural parents of children with permanent disabilities, and reached the Court on appeal.

Name of the court: Supreme Administrative Court
Date of decision: 15 November 2012
Name of the parties: National Health Insurance Fund v. Protection Against Discrimination Commission
Reference number: Decision N 14362 in case N 9167/2012
Address of the webpage:--
Brief summary: The Court, as a final instance, confirmed a ruling by the equality body and the lower court that held the NHIF liable for having excluded persons with disabilities (a type of multiple sclerosis patients) with over 65% loss of working ability from access to free medication. The equality body and the lower court had ruled that this exclusion based on a specific regulation was directly discriminatory on grounds of (degree of) disability. However, the Supreme Court re-qualified this as indirect discrimination, without giving any specific reasons for that. The Court also held that it was irrelevant that the particular complainant had not suffered a refusal of free medicine based on the impugned regulation because the NHIF in the meantime repealed the contested provision. The case was originally brought before the equality body by a female patient, a member of the excluded category.

Name of the court: Supreme Administrative Court
Date of decision: 22 Februari 2012
Name of the parties: Metodi Tenchev and Protection Against Discrimination Commission v. Mayor of Perushtitsa
Reference number: Decision N 2617 in case N 13911/2011

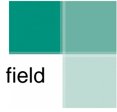


Address of the webpage: --
Brief summary: The Court, as a final instance, confirmed a ruling against a business operating a cafeteria/ bar establishment for a deliberate refusal to a allow Roma in as customers. This case is a symptom that such practices still exist in Bulgaria. The sanctions imposed include a fine of BGN 1000 (ca EUR 500) on the manager, and an instruction to abolish the discriminatory order he gave the personnel not to admit Roma. Respondent was given 10 days to comply with the instruction, and inform the Commission accordingly.

Name of the court: Supreme Administrative Court
Date of decision: 14 September 2012
Name of the parties: Boyan Stankov-Rassate v. Protection Against Discrimination Commission
Reference number: Decision N 11259 in case N 1916/2012
Address of the webpage: --
Brief summary: The Court, as a final instance, confirmed a ruling by the equality body and the lower court against a far right activist for extreme racist statements he made on television and radio, targeting refugees from Africa. The Court held that the constitutional right to free expression is limited "precisely to sanction racism and xenophobia manifestations". It found that „expressions that include propaganda of hatred, enmity, hostility and humiliation of persons with a different skin colour" constituted discrimination. The Court expressly holds that it is not necessary for such expression to target a specific individual for it to be unlawful. The sanctions imposed on the perpetrator include a fine of BGN 2000 (ca EUR 1000), and an instruction to abstain from such conduct.

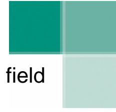
Name of the court: European Court of Human Rights
Date of decision: 24 April 2012
Name of the parties: Yordanova et Ors v. Bulgaria
Reference number: *Application no. 25446/06*
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":["yordanova"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-110449"]}
Brief summary: The European Court of Human Rights ruled that Bulgaria would breach the European Convention on Human Rights if a Roma community is evicted from illegally occupied municipal land without being guaranteed against homelessness. The Court required Bulgaria to amend its faulty legislation allowing summary arbitrary evictions, and to abolish the local government order to vacate the applicants' families from the land they lived on for several decades.

In 2005, the 23 applicants, as well as all others in their informal settlement in Sofia, were served with a 7-day notice to vacate the municipal land their homes were on, or face forced eviction and demolition of the housing. None of the affected people had alternative accommodation, and the authorities provided for none, nor for any compensation. The settlement had existed for several decades, with the authorities' passive acceptance. Domestic law on municipal property, however, provides for



discretionary evictions, without any proportionality analysis; it also bans acquisition by prescription. In the domestic proceedings brought on behalf of the applicants to quash the eviction order, the courts refused to hear any proportionality arguments based on the ECHR. The eviction order was confirmed, and a case in the ECtHR was brought. In 2008, the ECtHR provided interim relief, staying the execution of the order. The Court's ruling on the merits contains a specific injunction for legislative change, and for the authorities to repeal the impugned eviction order. The Court found that, if the eviction were to be carried out, it would constitute a violation of Article 8 ECHR. The Court ruled no separate issue of discrimination arose, even though the applicants asserted a non-Roma community in a comparable situation would not have been treated with such brutal disregard by the authorities.

A number of anti-Romani hate speech cases have been taken, both at national level and before the European Court of Human Rights. At the domestic level, there have been such cases before the civil courts, before the equality body and (on appeal) the administrative courts, and criminal complaints before the prosecutor's office. Civil court cases and criminal cases have concerned mostly political hate speech and hate speech by influential journalists. They have been unsuccessful, with the magistrates implicitly or explicitly legitimizing defamatory racist statements, on the basis of their 'factuality'.



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?

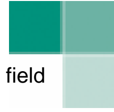
Art. 6 (2) of the Constitution bans discrimination on grounds of, exhaustively, race, national origin, ethnicity, sex, origin, religion, education, conviction, political affiliation, personal or public status, and property status. Disability, sexual orientation and age are not protected. This provision 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,[13] 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: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

i) racial or ethnic origin,

Racial/ethnic origin is not defined at all.

ii) religion or belief,

Religion/belief is not defined under discrimination law.

iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union 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"?

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."[14] (This would be the definition to apply in disability discrimination cases too. In practice, however, it rarely, if at all, has come to this. Judges rarely examine whether the disability alleged corresponds to a particular

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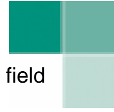
[13] Adopted 30.09.2003, in force as of 01.01.2004.

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



legal definition. This is largely because cases so far heard have implicated clear, unquestionable disability.) This definition 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 have stipulated a type and degree of disability of 50 per cent or more.”[15]

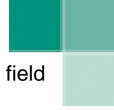
This definition of permanent disability is narrower than the ECJ concept of disability as it requires three additional elements – permanence of what is effectively the equivalent of a hindrance to participation, a threshold of 50% incapacitation, and official medical certification of the latter. Persons with permanent disabilities are entitled to extended protection and inclusion measures.[16]

Under the Automobile Transport Act, Additional Provisions, § 1, 42, “a person with disabilities” and “a person of reduced mobility” are defined within the meaning of Regulation (EU) № 181/2011. Under the Railway Transport Act, Additional Provisions, § 1, 41, “a person with disabilities” or “a person of reduced mobility” is defined as a person within the meaning of Article 3, paragraph 15 of Regulation (EC) № 1371/2007.

A piece of secondary legislation defines “persons of reduced mobility” as including persons with physical, sensory, mental and combined disabilities, pregnant women, persons accompanying young children, persons temporarily hindered in their

[15] Amended in 2009. This definition is reproduced literally in the Employment Encouragement Act, § 1.29 Additional Provision.

[16] 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; targeted assistance and alleviations for the purchasing of a car, housing restructuring, and personal assistants; stipends and other alleviations for students; municipal housing.



movements (in plaster, crutches), persons carrying large and heavy items, older people, persons shorter than 150 cm, including children, persons taller than 200 cm, and persons who don't understand or speak Bulgarian.[17] Another piece of secondary legislation defines "persons of reduced mobility" as including persons with disabilities within the meaning of the Integration of Persons with Disabilities Act, as well as older people, pregnant women, and persons accompanying young children.[18]

Similar or broader definitions of persons of reduced mobility are included in a number of other secondary legal acts: Ordinance N 22 of 22 December 2008 Concerning Technical Requirements For Ships On Inland Water Routes, Additional Provisions, § 1, 107 - "persons of reduced mobility" are persons with specific problems in using public transport, as well as older people, handicapped people or with sensory disabilities, persons in wheelchairs, pregnant women and persons accompanying young children"; Ordinance 97 of 8 January 2004 Concerning Approval of the Type of New Motor Vehicles for Transportation of Passengers with More Than 8 Seats Excluding the Driver, Additional Provisions, § 1, 29 - "a passenger of reduced mobility" is any person that has difficulties in using the public transport, as well as persons with disabilities (including persons with impaired sensory or mental abilities and wheelchair users), persons with limb impairments, shorter people, passengers with large luggage, older people, pregnant women, persons with shopping carts and persons accompanying young children (including children in prams)"; Ordinance 261 of 13 July 2006 On the General Rules for Compensation and Cooperation of Passengers in Cases of Refusal by An Air Carrier to Let Them on Board an Aircraft and in Cases of Cancellation or Delay of a Flight: Additional provisions, § 1, 3 - "a person of reduced mobility" is a person whose mobility is reduced in using transport due to physical inability (sensory or motional, permanent or temporary), mental disability, age or any other reason for inability and whose position requires special attention and adaptation of the services offered to all passengers to the needs of this person".

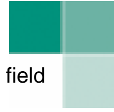
iv) age,

Age is not defined at all

v) sexual orientation?

Sexual orientation is defined under the Protection Against Discrimination Act, § 1.10 Additional Provision, as "heterosexual, homosexual or bisexual orientation." While this may not be considered a definition by some, this is the only one provided for.

[17] Ordinance N 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings, Additional Provisions, § 1.1. This ordinance applies universally as concerns architectural and infrastructural accessibility.
[18] Ordinance N 20 of 8 September 2011 Concerning Safety Rules and Standards for Passenger Ships, Additional Provision, 22. This ordinance applies to passenger ships.



b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

i) *racial or ethnic origin*

Domestic law provides for no definition of racial or ethnic origin. Applicable international law, including the European Convention on Human Rights and the International Convention for the Elimination of Racial Discrimination, are directly applicable at the national level but in practice definitions developed under those instruments have not been used in national equality case law. In fact, the need has not arisen to argue about the meaning of those terms.

ii) *religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?*

Domestic law provides for no definition of religion or belief.

iii) *Disability*

Equality law does define disability, and those definitions are outlined above. Other law definitions, also mentioned above, complements equality law definitions.

iv) *Age*

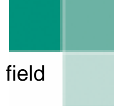
Domestic law provides for no definition of age.

v) *sexual orientation*

Equality law does provide a definition, outlined above.

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.[19] This definition is only relevant for purposes of the positive measures provided for under the Employment Encouragement Act. Recital

[19] "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.



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.[20] 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”.[21] 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.”[22] 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”[23] as opposed to white. This outdated concept of race as not including ethnicity has been used by criminal justice authorities, for instance, as a pretext not to enforce criminal law provisions on racist hate crime against attackers targeting Roma. The judicial authorities’ clear, albeit implicit, position is that discrimination against ethnic minorities, such as the Roma, Turks, etc., is discrimination based on ethnicity.

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.

2.1.2 Multiple discrimination

a) *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 the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*

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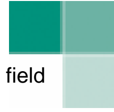
[20] "Adult" shall be a person in working age who is not being educated in [school] or [university] and who has not reached the respective pensionable age for women and men provided for under the Social Security Code.
[21] Additional Provisions, § 1.1.
[22] Additional Provisions, § 1.2.
[23] As the overwhelming majority of Bulgarians still refer to people of African origin.



Would, in your view, 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".[24] It places a statutory duty on public authorities to give priority to positive action measures for the benefit of multiple discrimination victims.[25] The specialised body, the Commission for Protection Against Discrimination, hears multiple discrimination cases sitting in a larger panel of 5 members (rather than the ordinary 3-member panel).[26]

The Commission for Protection Against Discrimination 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.

b) *How have multiple discrimination cases involving one of Art. 19 TFEU 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.

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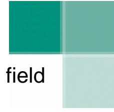
[24] Additional Provisions, § 1.11.

[25] 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.

[26] Art. 48 (3).



2.1.3 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 […]'.[27] 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".[28] 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? Please indicate whether the definition complies with those given in the directives.*

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

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

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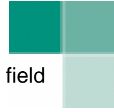
[27] Additional Provisions, § 1.8.
[28] Additional Provisions, § 1.8.



The Protection Against Discrimination Act explicitly prohibits employers from announcing discriminatory requirements for vacant jobs.[29] However, the Supreme Administrative Court has repeatedly refused to recognize this provision when reviewing equality body decisions applying it.[30] 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.[31] 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.

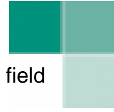
d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

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".[32] 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 clearly permit or prohibit the use of 'situation 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? If the law is silent please indicate.*

[29] Art. 12 (1).
[30] 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; Decision N 4065 of 07.04.2008 in administrative case N 1429/2008; Decision N 9164 of 11.08.2008 in administrative case N 4542/2008.
[31] Art. 7 Protection Against Discrimination Act. For specifics, see below, title *4. Exceptions*.
[32] § 1.7 Additional Provision.



National law makes no provision on testing. General civil evidentiary rules put no limit on the admissible types of proof.[33]

Under general civil procedure, judges and the quasi-judicial equality body are free to assess any evidence according to their own 'inner conviction'. Therefore, testing, as well as any other type of evidentiary tool, is implicitly allowed as a matter of course. The admissibility and merit of testing data in a particular case will be for the court to decide.

b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc.).*

NGO activists and lawyers have used testing as a means to procure facts and evidence, as well as claimant figures to initiate strategic litigation in defense of Roma rights. They have tested Roma's access to employment, as well as to hotel/ restaurant/ café and other catering services, including public swimming pools. In one case, testing, accompanied by TV cameras, was successfully used to document a practice of refusing Roma equal access to court buildings, and then admitted in court as evidence. In some cases, including a gay rights case, activist lawyers have used testing for purposes of discrediting respondents' pretexts within the framework of a pending case, i.e. in the course of litigation, rather than prior to initiating litigation.[34] For example, in a case against Sofia University concerning denial of access to a student sauna, the claimants successfully tested respondent's explanation that not gay men but non-students were excluded: the exercise revealed that non-gay non-students gained admission.[35]

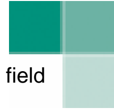
c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

There is no controversy surrounding testing. The term 'testing' 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 as a *theoretic* concept is yet to be initiated.

Yet, testing in practice has been successfully used in litigation. Both the civil courts and the equality body have unquestioningly admitted proof deriving from testing, including video recordings and witness testimony.

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

[33] Art. 12, Civil Procedural Code.
[34] For instance, Decision of 21.04.2005 of the Sofia District Court in civil case No 6520/2004. No information on the existence of newer case law is available.
[35] Ibid.



The civil courts, including the Supreme Court of Cassation, have expressly rejected respondents' allegations that activist testers are not credible as witnesses because of their professional commitment to rights defense, or because of the purposefulness of the testing exercise.[36]

Judges have explicitly stated that as long as, based on an overall assessment of the case file, there is no other evidence to refute testers' allegations and testimonies, the latter have to be credited.[37] In a Roma access to employment case, the court expressly held that the testing carried out by the activist witnesses was justified by their involvement in rights work. Judges have expressly held that activist claimants of declared affiliation with Roma rights groups have suffered more serious non-pecuniary damages because their sensitivity to discrimination was exacerbated as a result of their rights work.[38]

Respondents have not used the argument that tester claimants have no standing because their purpose was different from accessing the opportunity in question, and, therefore, their legal interests were not infringed. Neither judges, nor the equality body has expressed misgivings about testing being potentially misleading or provocative. They have not stipulated methodological requirements or other guarantees against bias. All in all, they have responded to testing as a perfectly natural means to verify a complaint of discrimination.

The equality body has not only unquestioningly accepted testing as a valid source of facts and evidence, but has done its own testing to verify complaints.[39] It has explicitly stated that testing results proving the invalidity of a respondent's pretext constituted *prima facie* discrimination mandating a shift of the burden of proof.

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

a) How is indirect discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.

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".

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[36] Inter alia, Decision N 591 of 12.03.2008 of the Supreme Court of Cassation.
[37] This approach may not be applicable in criminal law. There is no case law to provide an indication. Criminal law only governs racist hate violence and incitement to discrimination, and no other forms of discrimination. In that limited context, testing evidence may not have a place.
[38] Inter alia, Decision of 09.07.2004 of the Sofia District Court in case 1969/2004; Decision N 622 of 2005 of the Pazardzhik Regional Court in case 675/2005.
[39] Commission members, including a Roma person, and staff have visited unannounced a cafe and a swimming pool to see whether older clients and Roma are served, or whether club cards are required.

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

The test for justification is one of necessity. Neither the law, nor the case law have yet specified whether this is to be understood as strict proportionality rather than mere proportionality.

There is no legislative or judicial guidance on what constitutes a "legitimate aim". There is a dearth of indirect discrimination cases yet and the case law has not yet evolved a standard for either "a legitimate aim" or "an appropriate and necessary measure". As a rule, judges have failed to undertake a proper analysis of necessity, including by looking into alternatives to impugned measures. In most cases, they have accepted declarations of necessity by respondents without questioning the linkage between the asserted aim and the specific measures complained of. 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.

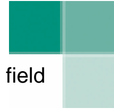
c) Is this compatible with the Directives?

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.[40] 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.

[40] For details, see footnote N 216 below.



e) Have differences in treatment based on language been perceived as potential 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.[41]

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.[42]

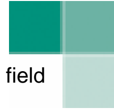
In effect, however, that was the real issue. The argument by the complainant was that this Turkish language requirement disproportionately excluded Muslim students from southern Bulgaria.

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.

[41] Decision N 59A of 30.11.2006 in case N 21 of 2005 before the Commission for Protection Against Discrimination, *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.

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



In another case, where an employer had posed a job requirement for Bulgarian as a "mother tongue", the equality body initiated an *ex officio* inquiry on allegations that this constituted direct ethnic discrimination.[43]

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.[44] 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.[45]

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 (European strategic litigation issue)?*

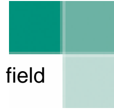
While it would be exaggerated to say that the use of statistics is widespread, it is not uncommon. Neither judges, nor the equality body has found any problems with the use of statistics. Comparative law has not been a factor, either way.

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.[46] 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

[43] Decision N 38 of 07.05.2007 in case N 11 of 2007 before the Commission for Protection Against Discrimination. 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".
[44] Art. 12, Civil Procedural Code.
[45] Ibid. in conjunction with art. 10, Civil Procedural Code.
[46] A common quota ratio is 1:1, i.e. 50 per cent women. The rationale is that men whose academic achievements are acceptably lower would otherwise be disproportionately excluded, to their own detriment and that of coeducation. There is no meaningful discussion why men perform worse. Sexist 'organic' reasons are put forth, including by public officials.



Roma in the ethnic composition of certain residential areas as a fact based on statistics.[47]

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 five grounds. The aim of this question is to find out 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 2011 Act, the Integration of Persons with Disabilities Act, the Ministry of Interior Act, and the Bulgarian Personal Documents 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.[48] Such data may not be collected unless the person concerned consents, or in specific exceptions accompanied with procedural guarantees.

The exceptions include where: 1) this is necessary to carry out specific duties under labour law; 2) it is necessary to protect human life or health, and the person concerned is unable to give their consent; 3) the data is collected by a non-profit organisation, including with a political, philosophical, religious or trade union aim, in the course of its lawful activities, provided that this only involves the organisation's

[47] 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 Commission for Protection Against Discrimination. 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.

[48] Respectively, art. 21 (2), Statistics Act; art. 5, Protection of Personal Data Act; art. 6 (3), Census 2011 Act.

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.[49]
Public bodies using positive measures do use statistics to design those.[50]

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.[51]

2.4 Harassment (Article 2(3))

a) *How is harassment defined in national law? Does this definition comply with those of the directives? 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

[49] 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.

[50] 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.

[51] 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.

of violating the dignity of a person and of creating a hostile, degrading, humiliating, offensive, or intimidating environment"

b) Is harassment prohibited as a form of discrimination?

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

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

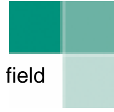
There is no further guidance on the concept of harassment, apart from a similar definition of sexual harassment under the Protection Against Discrimination Act.[52]

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

Each individual who performs an act of discrimination can be held liable. In addition, employers and service providers can be held liable for the actions of their employees or others carrying out work for them. This is a matter of general tort law, applicable to any legal person in discrimination cases.[53] However, members of organisations (including trade unions) who have no representative capacity (are not legal representatives of the organisation, under the law, or under its statute) cannot trigger the organisation's liability by their actions or omissions. Further, legal persons cannot be held liable for the actions of third parties, such as clients of theirs – unless they have knowingly aided/ abetted an act of discrimination.[54]

However, if an employee becomes the object of harassment at the workplace by a third party, and complains about it to their employer, the latter has a duty to take action to stop the harassment.[55] If an employer fails to take such action, the affected employee could take legal action against them, as a matter of general recourse.

[52] § 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, humiliating 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. The word 'humiliating' was added in 2012, in force as of 01.08.2012.
[53] Art. 49, Obligations and Contracts Act.
[54] Art. 8, Protection Against Discrimination Act.
[55] Art. 17, Protection Against Discrimination Act.



2.5 Instructions to discriminate (Article 2(4))

a) *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.[56] However, this definition may not be compatible with the Directives because it requires direct intent as an element. It no longer requires the perpetrator to be in a position to influence their audience, as amended as of 01.08.2012.[57]

Under the Protection Against Discrimination Act, incitement to discrimination, implicitly including instructions to discriminate, is expressly defined as a form of discrimination.

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

The Protection Against Discrimination Act bans incitement to discrimination, and defines it to expressly include instructions to discriminate.[58] However, this definition may not be compatible with the Directives because it requires direct intent as an element. It no longer requires the perpetrator to be in a position to influence their audience, as amended as of 01.08.2012.

Under the Protection Against Discrimination Act, incitement to discrimination, implicitly including instructions to discriminate, is expressly defined as a form of discrimination.

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

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

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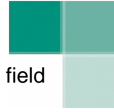
[56] Art. 5 in conjunction with § 1.5, Additional Provision.
[57] Law for the Amendment and Completion of the Protection Against Discrimination Act of 31.7.12, in force as of 1.08.12.
[58] Art. 5 in conjunction with § 1.5, Additional Provision.



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'. For example, 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?*

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

Further, under the Integration of Persons with Disabilities Act, the Minister of Education, Youth and Science has a duty to provide children with disabilities with a supportive environment for their integrated education.[62] 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, Youth and Science has a duty to create educational opportunities for

[59] Art. 16 and art. 32.
[60] Art. 24.
[61] Art. 30.
[62] Art. 17.2.

children with disabilities who are not integrated in a common educational environment.[63] This duty, too, is absolute.

Higher education institutions, too, have absolute accommodation duties under the Integration of Persons with Disabilities Act.[64]

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

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.[68] 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.[69]

b) *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.*

The definition of disability is one for all purposes under domestic law, including discrimination and reasonable accommodation.[70] 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.[71]

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.

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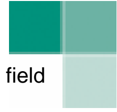
[63] Art. 18.
[64] Art. 20.
[65] Art. 314. Such accommodation can include both alleviations in work conditions for the same job, or reassignment to another job.
[66] The Labour Code, including this particular provision, has been in force since 1986.
[67] Art. 317 (4).
[68] Art. 16 (1.4).
[69] Art. 25 (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).
[70] Integration of Persons with Disabilities Act, § 1, Additional Provisions.
[71] Inter alia, Decision N 259 of 17.12.2008 in case N 186/2008.



c) *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.[72] 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".[73] The Integration of Persons with Disabilities Act also provides for accommodation duties for both schools and universities.[74] These duties are absolute.

d) *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 organization. There is no defence against the absolute ban on architectural environment that hinders persons with disabilities' access to public places under that Act.

Therefore, there is no defense for failing to ensure unhindered access to public places.

[72] Art. 32.
[73] Ibid.
[74] Art. 17 and art. 20.

Under the Integration of Persons with Disabilities Act, there is proportionality defence for employers (any kind), but not for public bodies or universities in their service provider capacities, i.e. vis-à-vis citizens and students.

e) *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 Labour Code, pregnant and nursing women are entitled to accommodation too. They, as well as female workers in an advanced stage of *in vitro* treatment, may refuse work that the government has determined poses a threat to their own, or their babies', health.[75]

Such women are entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.[76] If this is impossible or unjustified, the employer has a duty to take the necessary steps to assign the worker to another job.[77] The woman is bound by the medical authorities' instruction not to do the inappropriate job.

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.[78] Employers are under a duty to assign workplaces and jobs suitable for pregnant and nursing women, as well as women in an advanced stage of *in vitro* treatment, each year.[79]

i) *race or ethnic origin*

No.

ii) *religion or belief*

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]".[80] There has been no litigation on record as yet based on this provision. It is unknown whether it is applied in practice or not.

[75] Art. 307 (2) and (3), Labour Code.
[76] Art. 309 (1), Labour Code.
[77] Ibid.
[78] Art. 309 (2), Labour Code.
[79] Art. 309 (4), Labour Code.
[80] Under discrimination law, there is no definition of religion or belief in this or any other context.

iii) age

Under the Labour Code, an employer may assist young employees.[81] Under this Code, underage employees are entitled to special protection. These measures are not, strictly speaking, 'reasonable accommodation', nor are they termed so by lawyers, and they far predate the evolution of this concept under EU law. They are given here just for purposes of comprehensiveness.

The minimal age for access to employment is 16 years.[82] 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.[83] 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.[84] Further, the employment of any such individual must be authorised by the authorities.[85] Similar requirements are provided for in the case of 16-to-18-year-olds too.[86] 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.[87] 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.[88] 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.[89] Underage employees may not work more than 35 hours a week, or 7 hours a day, including vocational training time.[90] Such employees are entitled to no less than 26 working days annual leave.[91]

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 salary for up to a year.[92] 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 nine months.[93]

[81] Art. 294.6.
[82] Art. 301 (1).
[83] Art. 301 (2), Labour Code.
[84] Art. 302 (1), Labour Code.
[85] Art. 302 (2), Labour Code.
[86] Art. 303, Labour Code.
[87] Art. 304, Labour Code.
[88] Art. 305 (1), Labour Code.
[89] Art. 305 (2), Labour Code.
[90] Art. 305 (3), Labour Code.
[91] Art. 305 (4), Labour Code.
[92] Art. 36.
[93] Art. 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).

Under the Employment Encouragement Act, further, older workers are provided special conditions. An employer who creates a new job and hires a person older than 50 years to do it is entitled to monies from the state for reimbursement of that person's salary for up to a year.[94] 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.[95]

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.[96] 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.[97] 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.[98]

iv) sexual orientation

No.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

Not applicable.

ii) religion or belief

Employment.

iii) Age

Employment.

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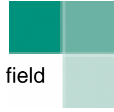
[94] Art. 55a.
[95] Art, 55b.
[96] Art. 222 (3), Labour Code.
[97] Art. 53-53a.
[98] Art. 53a (2).



iv) sexual orientation

Not applicable.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No, there is no such practice.

h) Does national law clearly provide 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".[99]

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.

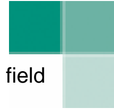
Conversely, it is also possible to argue that it does apply because the duty for reasonable accommodation is provided for under the Protection Against Discrimination Act and, therefore, any proceedings to enforce this duty are 'proceedings for protection against discrimination'. As there is no case law yet on this issue, the legal situation is open to interpretations.

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

Importantly, the Protection Against Discrimination Act, art. 5, stipulates that construction and maintenance of an architectural environment hindering the access of persons with disabilities to public places constitutes discrimination. The Act governs such construction and maintenance as a separate form of discrimination, alongside direct and indirect discrimination, harassment, incitement to discrimination, victimization, 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 defense.

[99] Art. 9.



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

A piece of secondary legislation, Ordinance N 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements of an Accessible Environment for the Population, including People with Disabilities, provides for extensive and detailed technical standards for accessibility of all urban environment and other areas.

A number of policies provide for accessibility too. The *Strategic Plan of the Ministry of Labour and Social Policy* for 2009 – 2013 features securing an accessible architectural environment as a declaratory goal. The *Development of Education, Science and Youth Policies Programme 2009-2013* provides for securing architectural, informational and communications access to schools and universities, including training of teachers/ professors and printing out of textbooks.

The *National Programme on Developing School Education and Preschool Instruction and Preparation 2006 – 2015* also features "integration of children with special educational needs" through creating a supportive environment, including an accessible physical environment, opportunities for individualized curricula education, provision of special textbooks and learning materials and technical tools, training of teachers, as well as eliminating the wrongful practice of assigning children who do not need it to special schools. *The National "Building of an Accessible Architectural Environment" Programme* provides for the building of ramps and other facilities for students with disabilities, adaptation of sanitary facilities and infrastructure maintenance.

The *Strategy to Secure Equal Opportunities for Persons with Disabilities 2008-2015* provides for ensuring access to all public buildings, including state institutions, educational establishments, cultural and entertainment places, hospitals, workplaces, homes.

All types of transportation – land, air, and sea, are to be adapted. Students with special educational needs are to be provided with supportive teachers, special technical means and equipment, learning materials, etc. The *Action Plan to Secure Equal Opportunities for Persons with Disabilities 2012-2013* provides for securing access to all public sites and transportation too, as well as to information. It also provides for closing down special schools and integration of students with special educational needs in mainstream schools. The Ministry of Labour and Social Policy *Employment Strategy* and the *National Strategy for the Child* provide for securing an accessible environment too. The *National Programme to Guarantee the Rights of*

[100] Art. 33-34, 36, 38.

Children with Disabilities 2010 – 2013 provides for creating an accessible school environment too, as well as for securing adapted learning materials.

j) 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.[101]

The Integration of Persons with Disabilities Act provides for integration of people with disabilities in the working environment via an accessible architectural environment.[102] 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.[103] 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.[104]

The Territory Organization Act provides that transport infrastructure shall ensure "best conditions" for accessibility for people with disabilities.[105] It further provides that city planning shall set accessibility standards,[106] and create conditions for environment and technical infrastructure accessibility.[107] 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.[108]

Ordinance N 4 of 1 July 2009 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements for an Accessible Environment for the Population, including people with disabilities (Ordinance N 4) sets the technical standards in considerable detail.

Under the Integration of Persons with Disabilities Act, state bodies and local government authorities are responsible for the organization of urbanized territory.[109]

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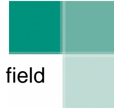
[101] Art. 5, Protection Against Discrimination Act
[102] Art. 2.4 in conjunction with art. 4.4, Integration of Persons with Disabilities Act
[103] § 6, Transitional and Final Provisions.
[104] § 11, Final Provisions, Civil Servant Act Amendment Act of 2008.
[105] Art. 75 (3).
[106] Art. 107.5.
[107] Art. 112 (4).
[108] Art. 169 (2).
[109] Art. 32.



The Minister of Regional Development and Public Works is responsible for adopting standards for accessible buildings and infrastructure.[110]

The Minister of Transportation is responsible for adopting standards for public transportation accessibility.[111] Municipalities are responsible for building accessible kindergartens and schools, and for providing accessible public transportation.[112] Under the Territory Organization Act, construction oversight officials are responsible for appraising a new building's accessibility for people with disabilities.[113] The Minister of Regional Development and Public Works is responsible for control over the implementation of this law, including accessibility standards for building.[114]

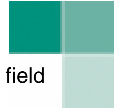
Under Ordinance N 4 "accessible environment" is defined as "an environment in urbanised territories, buildings and equipment which every person of reduced mobility, with or without disabilities, can use freely and independently".[115] The Ordinance applies to all "urbanised territory, buildings and equipment", in particular "pedestrian spaces, crossroads and zebra crossings, stairs, lifts and wheelchair ramps, parking lots, public telephones and automats, seating places, post boxes, toilets, signs".

All persons, private and public alike, are responsible to secure accessibility. Public institutions responsible to guarantee the implementation of this duty include the minister of regional development and public utilities, central and local government bodies, and municipality mayors.

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.[116]

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.

[110] Art. 33, Integration of Persons with Disabilities Act.
[111] Art. 34, Integration of Persons with Disabilities Act.
[112] Art. 38, Integration of Persons with Disabilities Act.
[113] Art. 168.
[114] Art. 220, Organization of Territory Act.
[115] Additional Provision, § 1.2. There are also definitions for several types of "accessible itinerary," "accessible entrance," "accessible website," and "accessible information map".
[116] 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.



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.

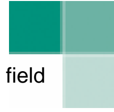
The undertaking of *some* measures was legally irrelevant because the law did not require municipalities to *make efforts* for an accessible environment but charged them to *secure* such an environment. This strong line of Supreme Court decisions has changed the case law of the lower courts in Plovdiv. 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.[117]

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.[118]

The body instructed the Minister of Finance and all municipality mayors to budget the necessary monies to eliminate architectural barriers.[119] 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.[120] It instructed the Minister of Justice to reorganise the building of the Sofia District Court, finding that its inaccessibility constituted discrimination.[121]

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.[122] 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.

[117] Decision N 427 in civil case N 1064/2008.
[118] Decision N 60 of 08.04.2008.
[119] Ibid.
[120] Decision N 45 of 27.02.2008.
[121] Decision N 39 of 25.02.2008.
[122] Decision N 171 in case 158/2008.



k) *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 "specialized enterprises and cooperatives of people with disabilities", defining the criteria for those businesses recognition as "specialized enterprises" under the law. The Act creates duties for public bodies for architectural and infrastructural accessibility, including urban planning, transportation, sports facilities, kindergartens, and mass media information.

It also provides for social protection of persons with disabilities, including via aids, devices, and medical facilities; for tax preferences for individuals and for sheltered employers; for monthly monetary supplements for integration and rehabilitation; as well as for targeted financial assistance and alleviations for particular goods and services. The Act finally provides for the means of funding the positive and accommodation measures provided for.

Further, the Labour Code provides for reasonable accommodation and sheltered employment for people with disabilities. It also provides for special protection against dismissal for persons with disabilities. Under the Code, workers who have received accommodation, and workers ailing from particular government-specified sicknesses, may not be dismissed at all unless the labour inspectorate consents beforehand.[123] 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.

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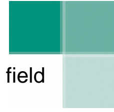
[123] Art. 333 (1.2-3).



Under the Civil Servant Act, quotas for persons with permanent disabilities are provided for.[124] Authorities with more than 50 staff are bound to designate at least 2% of all positions for such people.[125]

Authorities with staff between 26 and 50 are bound to designate at least one position.[126] Candidates for those positions compete only with other persons with disabilities.[127]

There are a number of policy documents providing for special and/or accommodation measures for persons with disabilities, including the *Strategy to Secure Equal Opportunities for People with Disabilities 2008-2015*; the *National Programme for Employment and Education of Persons with Permanent Disabilities*; the *Programme for Development of Education, Science and Youth Policies 2009-2013*; the *Action Plan to Implement the Programme for Development of Education, Science and Youth Policies 2009-2013*; the *National Programme for Development of School Education and Preschool Instruction and Preparation 2006-2015*; the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*.[128]

The current Ministry of Labour and Social Policy *Employment Strategy* provides for labour market integration of persons with disabilities and support for their specialized enterprises and cooperatives. Other policy documents provide for special measures for the benefit of persons with disabilities too.

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.[129]

The Social Assistance Agency within the Ministry of Labour and Social Policy has issued two sets of guidance – *Methodology for the Terms and Procedure for Providing the "Sheltered Accommodation" Social Service* and *Instruction for Organization of the Work of Providing the "Sheltered Accommodation" Social Service in the Community* (for people with learning disabilities).
The first document is more general, and the second – more concrete. There also are the *Methodology on the Terms and Conditions to Provide the "Sheltered*

[124] Art. 9a.
[125] Art. 9a (1.1), Civil Servant Act.
[126] Art. 9a (1.2), Civil Servant Act.
[127] Art. 9a (2), Civil Servant Act.
[128] Available at: http://www.diuu.bg/normativni_dokumenti/strategii/plan_spec_potrebnosti.pdf.
[129] Art. 36 (2.7.d).

Accommodation" Social Service and the *Methodology on the Terms and Conditions to Provide the "Monitored Accommodation" Social Service* - for „people at risk"*.*

The Integration of Persons with Disabilities Act provides for employment of people with disabilities in a "specialized work environment", as well as in integrated employment.[130] Further, the Labour Code provides for "specialized enterprises and workshops for persons with permanently 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.[131] The terms and conditions of employment in those sheltered facilities are to be determined by the government.[132]

The Integration of Persons with Disabilities Act reserves the status of "specialized enterprises and cooperatives of people with disabilities" for businesses whose employees are at least 20% people with permanent visual impairments or at least 30% people with permanent hearing impairments, or at least 30% people with other permanent disabilities.[133] Under this law, such businesses are eligible for government subsidies based on approval of particular projects.[134]

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 specialized cooperatives and enterprises in Bulgaria, employing 14,573 people.[135] In July 2011, there were 130 such enterprises, employing a total of 3 813 people, of whom - 2 119 persons with disabilities.[136] 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.[137] Specialized 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- including for the purposes of application of the anti-discrimination law?

Sheltered employment in "specialised enterprises and workshops" is unequivocally employment under national law.[138]

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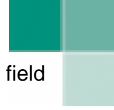
[130] Art. 22.
[131] *Art. 316.*
[132] *Ibid.*
[133] *Art. 28 (1).*
[134] *Art. 28 (2).*
[135] EUMAP, *Rights of People with Intellectual Disabilities*: Bulgaria 2005, http://www.eumap.org/topics/inteldis/reports/national/bulgaria/id_bul.pdf.
[136] Data provided by an employee of the Agency for Persons with Disabilities on 13 July 2001.
[137] *Ibid.*
[138] *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.[139] Non-nationals, however, are protected from discrimination based on nationality only insofar as such discrimination has no basis in primary legislation.[140] 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.[141]

Legal residence is irrelevant to entitlement to anti-discrimination protection; only factual being within the territory is a condition.[142]

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

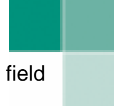
a) *Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

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.[143]

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

[139] Protection Against Discrimination Act, art. 3 (1).
[140] Protection Against Discrimination Act, art. 7 (1.1).
[141] Art. 26 (2) of the Constitution.
[142] There is no case law on potential conflicts between this domestic provision and article 14 of the European Convention on Human Rights. However, if domestic law is more generous than the Convention that need not be a problem under the Convention.
[143] Art. 3 (2), Protection Against Discrimination Act.



has made a dictum in direct contravention to the law that only natural persons could be victims of discrimination.[144]

b) Is national law applicable to both private and public sector including public bodies?

Yes, national law is expressly applicable *erga omnes*, including all public bodies.[145] Case law consistently recognises this.

3.1.3 Scope of liability

Are there any liability provisions than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

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.[146] 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.[147] 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

[144] 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. There is no available information on other decisions, such as this. It is rather to be seen as an isolated incidence. As stated above, legal entities' entitlement to equality protection is recognised in case law, by numerous decisions.
[145] Art. 6 (1), Protection Against Discrimination Act.
[146] Contracts and Obligations Act, art. 45 in conjunction with art. 49.
[147] Protection Against Discrimination Act, art. 8.

mentioned under the Racial Equality Directive.[148] 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.

The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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.[149] The public sector is governed in the same way as the private one.
The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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.

[148] Protection Against Discrimination Act, art. 6.1.
[149] Ibid .

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds,[150] providing for an exception for age only for purposes of pensions in general, including occupational ones.[151]

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.[152] 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.[153] Therefore, direct differentiation based on age is formally lawful in respect of occupational pensions.

The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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 lifelong learning courses?

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.[154]

The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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))

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.

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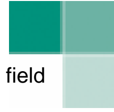
[150] Ibid.
[151] Art. 7 (1.8).
[152] Art. 243 (4).
[153] Art. 243 (6).
[154] Art. 6.1.



The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.[155]

The Integration of Persons with Disabilities Act is not relevant here.

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.[156] 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,[157] and nothing else.

The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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 to people because of their employment or residence status, for example 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.[158] The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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.

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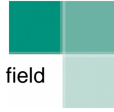
[155] Ibid.
[156] Ibid.
[157] Art. 7 (1.8).
[158] Art. 6.1.



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 are favoured and supported.

The Protection Against Discrimination Act implicitly applies fully to this field with respect to all grounds.[159] The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

Patterns of educational exclusion/ segregation of Roma include:

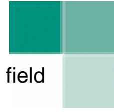
1. children at home, or in the street with no access to school at all;
2. children in separate schools in segregated residential areas (ghettoes);
3. children in separate classrooms in mainstream schools;
4. children in remedial schools (disproportionate representation);
5. children in schools for juvenile delinquents (disproportionate representation).

There have been a few cases brought to court to challenge all-Romani schools.[160] 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.[161] The appeal court, however, repealed this judgment.[162]

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.[163]

[159] Ibid.
[160] 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).
[161] 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.
[162] Decision of 27.02.2007 of the Sofia City Court, civil case N 3139 of 2005.
[163] Decision of 27.02.2007 of the Sofia City Court, civil case N 3139 of 2005.



The Supreme Court of Cassation, the final instance, confirmed this decision.[164]

Two other cases were lost.[165] 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.[166]

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.

While under the legislation formally inclusive education is the rule,[167] 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.

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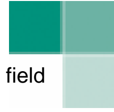
[164] Decision N 723 of 01.08.2008, civil case N 6402 of 2007.

[165] 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.

[166] Decision N 80 of 16.10.2007 of the Commission for Protection Against Discrimination. 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.

[167] The National Education Act and secondary legislation on the education of students with special educational needs - Ordinance N 1 of 23.01.2009.



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.[168] Children with profound intellectual disability are implicitly excluded from any schooling.[169] While children with mild intellectual disability are no longer to be sent to special schools under new secondary legislation,[170] 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.[171]

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 intellectual 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 intellectual disabilities by limiting their educational opportunities.[172] Parents mobilizing to advocate for their children's rights are also a factor.

[168] Ordinance N 1 of 23.01.2009.
[169] Ibid.
[170] Ibid.
[171] Ibid.
[172] 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.[173] 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.[174]

The Integration of Persons with Disabilities Act does not deal with banning discrimination, as much as with providing for special measures.

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.[175] The Students and Doctoral Students Crediting Act itself sets a maximum age of less than 35 for eligibility.[176] 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.[177] 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.

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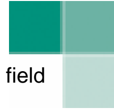
[173] Art. 6.1.
[174] *Anguel Manin and Marin Kirkovski v. Commission for Protection Against Discrimination*, Decision № 451 of 14.01.08 in case № 10322/2007, Supreme Administrative Court.
[175] Art. 7 (1.12), Protection Against Discrimination Act.
[176] Art. 3 (1.1).
[177] Art. 230 (3).



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 against 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.[178]

The majority of Roma live in ghettoes 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. In 2012, the European Court of Human Rights rendered a decision against Bulgaria, in a case of impending collective forced eviction threatening an entire Romani community.[179] The Court held there was a breach of the affected persons' rights to home and to private and family life, because the eviction would render them homeless, which the authorities did not consider. They also failed to consider the fact of their own contribution, over decades, for the situation at hand – the community unlawfully occupying municipal land. The Court ordered the authorities to change the law, by introducing a proportionality test for the making of such eviction decisions, and forbade them to reconsider the impugned eviction decision before so amending the law.

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.[180]

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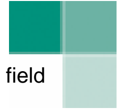
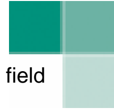
[178] Art. 6.1.
[179] Yordanova and Ors. v. Bulgaria, Application *no. 25446/06.*
[180] Art. 50 (1).



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.[181] 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).[182] 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.[183]

[181] Art. 14 (1.2).
[182] Art. 8 (2.4).
[183] 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.[184] 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.[185] 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”.[186] This means that sex discrimination is allowed in access to religious education/ training with no proportionality required. Clearly, as concerns vocational training, this is in conflict with art. 14 (2) of the Recast Directive 2006/54 EC.

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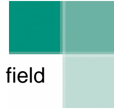
[184] Art. 7 (1.2).
[185] Art. 7 (1.3).
[186] *Art. 7 (1.4).*



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 differentiation and equality rights.

c) *Are there cases where religious institutions are permitted to 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)? What are the conditions for such selection? 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.

4.3 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, and the Integration of Persons with Disabilities Act is irrelevant here. However, the special law governing the professional army provides for age and "ability" (both physical and psychological) requirements for access to recruitment.[187] Both types of "ability" for recruitment purposes are required to be medically certified.[188] 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

[187] Art. 141 (1), Defence and Armed Forces of the Republic of Bulgaria Act.
[188] Art. 141 (2-3) Defence and Armed Forces of the Republic of Bulgaria Act.

access to employment.[189] Persons who do not comply with those requirements are not even allowed to apply.[190]

Applicants must be “clinically healthy, not suffer from mental illnesses, and be medically able”.[191] The requisite healthiness and ability is to be certified by an expert medical commission.[192] 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.

4.4 Nationality discrimination (Art. 3(2)

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

a) *How does national law treat nationality discrimination? Does this include stateless status?*
What is the relationship between ‘nationality’ and ‘race or ethnic origin’, in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. 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.[193] It makes a significant exception, however, for differential treatment based on nationality that is provided for under primary legislation.[194] 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.[195]

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[189] Art. 179.
[190] Art.5, Ordinance N Із-1809 of 03.09.2012 on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.
[191] Art. 7 (1.3), Ordinance N Із-1809 of 03.09.2012 on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.
[192] Art. 9.2, Ordinance N Із-1809 of 03.09.2012 on the Terms and Conditions for Joining Civil Service with the Ministry of Interior.
[193] Art. 4 (1).
[194] Art. 7 (1.1).
[195] Art. 7 (1.1) expressly exempts legal differences of treatment based on a lack of nationality, as well as nationality.

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.[196]

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.[197]

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 employees and their partners. 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) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?

Under the Protection Against Discrimination Act it would be discrimination and, therefore, unlawful for an employer to exclude unmarried employees from access to work-related benefits. The Act bans all discrimination based on family status. This is so because the Act expressly bans any discrimination in any field, including employment, on any ground, including family/ marital status.

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

Under the Protection Against Discrimination Act it would be discrimination and, therefore, unlawful for an employer to exclude same-sex partner employees from access to benefits. This Act bans all discrimination based on sexual orientation, including by association.

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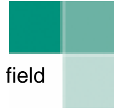
[196] In 2003, when the Directives were transposed via the Protection Against Discrimination Act, there were a number of legal provisions differentiating on grounds of nationality. There still are. Those have never been reviewed to reveal whether they might be indirectly discriminatory against racial groups.
[197] Art. 7 (1.1), Protection Against Discrimination Act.



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

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

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,[198] considering the specific dangers for employees with reduced work capability.[199]

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.

b) 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 such exceptions provided for.

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

4.7.1 Direct discrimination

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 Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

Under the Protection Against Discrimination Act, there is no general possibility for justifying direct discrimination on any ground, including age. Direct discrimination, including on grounds of age, is only allowed in exhaustive specific exceptional cases.

In all but two cases where the Protection Against Discrimination Act makes exceptions for differential treatment based on age, it stipulates a proportionality test,

[198] Art. 16 (1.2a).
[199] Art. 16 (1.3).

requiring the difference of treatment not to exceed what is necessary for the achievement of a legitimate aim.[200]

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.[201] 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.[202]

a) *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.[203] 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.[204] 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.[205] This latter exception may fall within the scope of Directive 2000/78 insofar as it implicitly applies to vocational training, as well as other

[200] Art. 7 (1.5-6) and (1.11).
[201] Art. 7 (1.8).
[202] Art. 3 (1.1).
[203] Art. 7 (1.5).
[204] Art. 7 (1.6).
[205] Art. 7 (1.11).

education and training. Last, the Act problematically permits unjustified requirements for age and length of service for purposes of retirement.[206]

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

The Protection Against Discrimination Act allows for age requirements for purposes of pensions in general, including occupational ones, without requiring those requirements to be justified, or to avoid producing sex discrimination.[207]

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.[208] Under this Code, underage employees are entitled to special protection.

The minimal age for access to employment is 16 years.[209] 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.[210] 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.[211] Further, the employment of any such individual must be authorised by the authorities.[212] Similar requirements are provided for in the case of 16-to-18-year-olds too.[213] 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.[214] 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.[215] 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.[216] Underage employees may not work

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[206] Art. 7 (1.8.).
[207] Ibid.
[208] Art. 294.6.
[209] Art. 301 (1).
[210] Art. 301 (2), Labour Code.
[211] Art. 302 (1), Labour Code.
[212] Art. 302 (2), Labour Code.
[213] Art. 303, Labour Code.
[214] Art. 304, Labour Code.
[215] Art. 305 (1), Labour Code.
[216] Art. 305 (2), Labour Code.

more than 35 hours a week, or 7 hours a day, including vocational training time.[217] Such employees are entitled to no less than 26 working days annual leave.[218]

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 salary for up to a year.[219] 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 nine months.[220]

Under the Employment Encouragement Act, further, older workers are provided special conditions. An employer who creates a new job and hires a person older than 50 years to do it is entitled to monies from the state for reimbursement of that person's salary for up to a year.[221] 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.[222]

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.[223] 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.[224] 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.[225]

Under the Labour Code, pregnant and nursing women, as well as women in an advanced stage of *in vitro* treatment, are entitled to special protection. Such women may refuse work that the government has determined poses a threat to them, or their

[217] Art. 305 (3), Labour Code.
[218] Art. 305 (4), Labour Code.
[219] Art. 36.
[220] Art. 41. An intern in this case is a person with professional qualifications but no work experience (ibid.).
[221] Art. 55a.
[222] Art, 55b.
[223] Art. 222 (3), Labour Code.
[224] Art. 53-53a.
[225] Art. 53a (2).

babies' health.[226] They are further entitled to accommodation of the workplace or working hours to prevent any risk to their health or safety.[227] 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.[228] 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.[229] Employers are under a duty to assign workplaces and jobs suitable for such women each year.[230] Further, an employer may not send a pregnant or nursing woman, or a woman in an advanced stage of *in vitro* treatment, or a mother of a child not older than 3 years, on a business trip without her written consent.[231] A mother of a child not older than 6 years is entitled to work from home.[232]

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.[233] Where the woman starts work from home for another employer, her employment with her former employer is not terminated but she is considered to be on unpaid leave.

When she stops working from home, her employer is under a duty to restore her to her former job, or, where her former job was made redundant, to give her another appropriate job.[234] Where a mother is not in a position to avail herself of these rights, the father can exercise them.[235]

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 effect[236]

[226] Art. 307 (2) and (3), Labour Code.
[227] Art. 309 (1), Labour Code.
[228] Ibid.
[229] Art. 309 (2), Labour Code.
[230] Art. 309 (4), Labour Code.
[231] Art. 310, Labour Code.
[232] Art. 312 (1), Labour Code.
[233] Art. 312 (2), Labour Code.
[234] Art. 312 (3), Labour Code.
[235] Art. 313, Labour Code.
[236] 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

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 retirement,[237] provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed what is necessary.[238]

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 actually 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 longer, or can a person 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 a pension. The number of years of service is taken into account too.[239] The relevant ages are different for women and men.[240]

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 people 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 longer, or can an individual collect a pension and still work?*

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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.

[237] 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.

[238] Art. 7 (1.6).

[239] *Social Security Code, art. 68.*

[240] *Ibid.*

Workers, both women and men, become entitled to receipt of occupational pensions at 60.[241] As an exception, they can start collecting their occupational pensions 5 years earlier provided that this is provided for under a collective agreement.[242] 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, and 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,[243] and the police,[244] the law imposes age limits after which people, both women and men, can no longer remain in service. However, there is no bar for them to find employment in another sector, and still collect their pension. There have been minor changes in the maximum ages for the army in recent years. No changes are currently on record to be planned.

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

The law does not permit employers to set retirement ages. Those ages are imperatively governed by legislation, namely the Social Security Code in the general case,[245] or special laws, such as those applicable to the police and army as mentioned above.

The general legislative rule is that workers may be dismissed on the ground of age once they reach the applicable pensionable ages, which vary based on the particular number of years in service as mentioned above at (a).

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

Previously, once a worker became entitled to retire, the employer became entitled to dismiss them on this ground only.[246] In 2012, this general provision was abolished, and now employers can no longer, in general, dismiss people on this ground.

[241] *Social Security Code, art. 243 (4).*
[242] Social Security Code, art. 243 (6).
[243] Defence and Armed Forces of the Republic of Bulgaria Act, art. 160 (1). For soldiers, the limit is 45 years; that limit is raised for each higher rank, with 62 years as the limit for the highest ranking officers (ibid.).
[244] Ministry of Interior Act, art. 245 (1). The limit is 60 years.
[245] See above a).
[246] Labour Code, former art. 328.10, now amended.

Becoming a pensioner and leaving employment is now the prerogative of the employee. Protection against dismissal and other employment rights apply to those workers irrespective of age. This applies to all workers, apart from those in the army, police and academia.

The current restriction, as amended in 2012, only applies to academic workers – Professors, Assistant Professors and Doctors of Science. Those categories of workers are subject to dismissal, at the employer's discretion, when they reach 65 years, i.e. purely on age grounds.[247] They still, nominally, retain employment rights, but effectively have no protection against dismissal on age grounds. No publicly accessible reasons for this legislative decision were articulated.

A further age-based provision gives employers discretion to dismiss a worker who was hired after they became entitled to an old age pension, and exercised that right.[248] In other words, employers can freely dismiss persons who they hired as pensioners.

f) *Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding compulsory retirement.*

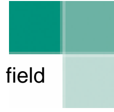
The only two age-based provisions in this context provide for dismissal of certain categories of university staff once they reach 65 years, and of pensioners who were hired after they became pensioners. Arguably, both provisions are in line with CJEU case law.

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.[249] However, in the case of Professors, Associate Professors and Doctors of Science, this barely matters because once employees reach the age of 65, this in itself is a legal basis for an employer to dismiss them, even if there is no redundancy.[250]

[247] Labour Code, art. 328.10.
[248] Labour Code, art. 328.10a.
[249] Art. 329 (1).
[250] Labour Code, art. 328.10.



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 double their monthly salary, and if they have worked with the employer for the last ten years, that compensation is in the amount of six times their monthly salary.[251] 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 Employment Equality Directive?

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

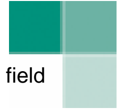
4.9 Any other exceptions

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

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

- different treatment on grounds of sex with respect to an occupation carried out in a religious organisation where, by reason of the nature of that occupation, or of the conditions it is carried out in, sex is an essential and determining professional requirement in view of the nature of the organisation, where the aim is legitimate and the requirement does not exceed what is necessary to achieve it;[252]
- 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;[253]
- special protection measures for pregnant women, women in an advanced stage of *in vitro* treatment and mothers that are provided for by law, unless the woman

[251] Art. 222 (3).
[252] Art. 7 (1.3).
[253] Art. 7 (1.4).



does not wish to benefit from those measures and has notified the employer accordingly in writing;[254]

- different treatment of persons with disabilities in training or education aimed at meeting their special educational needs in order to equalise their opportunities;[255]
- 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;[256]
- 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;[257]
- special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;[258]
- 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;[259]
- 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.[260]

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[254] Art. 7 (1.7).
[255] Art. 7 (1.10).
[256] Art. 7 (1.13).
[257] Art. 7 (1.14).
[258] Art. 7 (1.15).
[259] Art. 7 (1.16).
[260] 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 authorizes but mandates positive measures to equalize 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;[261] 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;[262] 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;[263] special protection measures for pregnant women, women in an advanced stage of *in vitro* treatment, and mothers that are provided for by law;[264] special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities;[265] 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;[266] 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.[267] 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.[268] The Act requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.[269]

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.[270] Therefore, any legislation providing for such action would be unconstitutional. By contrast, preferential

[261] Art. 7 (1.10).
[262] Art. 7 (1.13).
[263] Art. 7 (1.14).
[264] Art. 7 (1.7).
[265] Art. 7 (1.15).
[266] Art. 7 (1.16).
[267] Art. 7 (1.17). The law does not specify the measures allowed. Any measure falling into that category is excepted.
[268] Art. 11 (1).
[269] Art. 11 (2).
[270] Constitutional Court ruling N 14 of 1992.

measures based on other grounds, excluded from the constitutional equality clause, such as disability or age, are constitutional.[271]

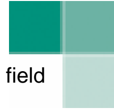
There is a conflict, therefore, between the Constitution and the Protection Against Discrimination Act insofar as authorization for positive measures is concerned. The conflict may, however, be nominal. There are a number of positive policy measures for the benefit of ethnic groups, in particular, Roma, 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. There has not been another Constitutional Court ruling on this subject since. If, in a future case the Court were to reproduce its 1992 ruling that would be in breach of the principle of the supremacy of EU law.

b) Do measures for 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 five grounds, and 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 purposes of accommodating people with disabilities and other entitled persons each year.[272] Under the Integration of Persons with Disabilities Act, at least half of those workplaces are to be reserved for people with permanent disabilities.[273] According to Agency for People with Disabilities' statistics, in 2009 18 240 workplaces were accommodated; of those, 10 058 were for people with permanent disabilities; 4 058 workplaces were actually occupied by people with (non-permanent) disabilities, while 5 476 were occupied by people with permanent disabilities; 2 678 accommodate workplaces were listed as vacant; 1 441 employers were in compliance with their duty under the Labour Code.[274] This data is incomplete and unreliable because, as the Agency explicitly recognises in its 2009 report, only 60 out of 150 territorial labour bureaux supplied data; there is no data on the number of employers who were under a duty; and the numbers stated for occupied and vacant workplaces don't match up with the overall number of accommodated workplaces. There are no up-to-date numbers.

Since 2001, in the pre-accession context, different governmental agencies have developed a number of policy documents addressing disadvantages of different

[271] Ibid.
[272] Art. 315 (1).
[273] Art. 27.
[274] Available at http://ahu.mlsp.government.bg/ (in Bulgarian).



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.[275] 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.

The National Strategy for the Child 2008-2018, 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

[275] Available at: http://www.mlsp.government.bg/bg/docs/Plan%202010-2011.doc.

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 counselling;
- Creation of a special unit for combating discrimination against children in the Commission for Protection Against Discrimination.

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 policy documents are the *National Plan for Integration of Children with Special Needs and/or Chronic Diseases in the National Education System*[276] and one document providing for a general framework for inclusion of persons with disabilities in employment, the *Employment Strategy 2008-2015*,[277] which considers persons with disabilities as one of the “disadvantaged groups” at the labour market and thus in need of measures “to eliminate apparent disparities and to increase the chances for employment and remuneration.

Other policy documents providing for positive action for people with disabilities include the *National Programme for Employment and Training of People with Permanent Disabilities*,[278] the *Strategy for Securing Equal Opportunities for People with Disabilities 2008-2015*,[279] the *National “Credit Without Interest for People with Disabilities” Programme*,[280] the *National “Assistants for People with Disabilities” Programme,*[281] the *Programme of the Government for European Development of Bulgaria*.[282] Another policy document providing for a general framework for inclusion of persons with disabilities in employment is the *Employment Strategy 2008-2015*.[283]

The *National Child Protection Programme* and the *Action Plan for Implementation of the Programme for Development of Education, Science and Youth Policies 2009 – 2013* provide for some positive measures for children with disabilities. So does the

[276] Available at: http://www.diuu.bg/normativni_dokumenti/strategii/plan_spec_potrebnosti.pdf.
[277] Available at: http://www.mlsp.government.bg/bg/docs/Labour_Market_Strategy_2008-2015.pdf.
[278] http://www.az.government.bg/Projects/Prog/HU/Frame_HU.htm.
[279] http://www.mlsp.government.bg/bg/docs/indexstr.htm.
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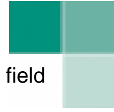
[283] http://www.mlsp.government.bg/bg/docs/Labour_Market_Strategy_2008-2015.pdf.



National Programme to Guarantee the Rights of Children with Disabilities 2010 – 2013 – alongside reasonable accommodation measures.

The *National Program for Integration of Refugees in Bulgaria 2011-2013*[284] envisages some positive action measures aimed at integration of recognized refugees. These cover the following spheres:

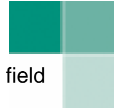
- Housing – implementing projects for financial assistance of municipalities for construction or renovation of housing for refugees; information services for refugees in the sphere of housing rights.
- Employment – vocational training; support in developing small businesses; training of labor bureaux officials for work with refugees.
- Education – training of teachers working with refugee children, research on the difficulties in school integration faced by refugee children; motivation and consultation of their parents.
- 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; inclusion of refugees in screening campaigns for prevention of cancer; inclusion of the refugees in health strategies for disadvantaged minorities.
- Programs for refugees with special needs – for 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.

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 (2010-2020),*[285] *the National Programme for Development of School Education and Preschool Instruction and Preparation 2006 – 2015, the Programme for Development of Education, Science and Youth Policies 2009 – 2013 and the Action Plan for implementation of this programme, the Programme of the Government for European Development of Bulgaria, the National Strategy for the Child 2008 – 2018, the Strategy for Educational Integration of Children and Students of Ethnic Minorities.*

[284] Available at: http://www.aref.government.bg/docs/NP_2011_190111.doc.
[285] Available at: http://www.nccedi.government.bg/page.php?category=35&id=1278 (in Bulgarian).



A piece of secondary legislation*, Decree No 4 of the Council of Ministers of 11.01.2005 Creating a Centre for Educational Integration of Children and Students from Ethnic Minorities*, provides for desegregating Roma students.

Housing
Measures are provided for under the *Framework Programme for Equal Integration of Roma into Bulgarian Society 2010-2020*, the *National Action Plan for the Decade of Roma Inclusion,* the *National Programme for Improving the Housing Conditions for Roma in Bulgaria* (2005 - 2015), the *National Housing Strategy*, the *National Strategy for Demographic Development 2006 - 2020*.

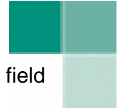
Healthcare
Measures are provided for under the *Health Strategy for Persons in Unequal Position Belonging to Ethnic Minorities 2005 – 2015* and the *National Health Strategy 2008 – 2013*, and the *Framework Programme for Equal Integration of Roma into Bulgarian Society 2010 - 2020.*

Employment
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 2010-2020* broadly provides for programmes and funds to ensure access to vocational training, employment and business loans for Roma.

The *National Programme for Literacy and Qualification of Roma* (specially favoring illiterate persons younger than 29),[286] and the *National "Activation of Inactive Persons" Programme* also provide for special measures. The authorities make (annual) reports on the implementation of (most of) those positive programmes (but not all years). Some of those reports are available on the Internet. Few are specific or detailed.

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.

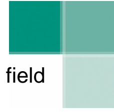
[286] According to that document, 12.7% of all Roma (all ages) are illiterate, and over 17% of Roma between 16 and 25 years of age are illiterate. No figure is mentioned specifically for those under 29 years of age.



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 north eastern city of Dobritch. 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.

The national Roma integration strategy has yielded no changes in terms of official conduct. Its only results seem to be an enhanced access to education for Roma where activities provided for are carried out by NGOs.



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.

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.[287] 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.[288] 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.[289]

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

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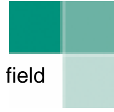
[287] The maximum amount of sanction imposable on an individual for an act of discrimination is the equivalent of EURO 1000. For legal persons this is EURO 1250. For a repeated offence, the sanction is automatically double. For a failure to abide by a decision of the equality body, the maximum sanction 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.

[288] For Supreme Court proceedings, both administrative (or judicial review) and civil, appelants 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.

[289] 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) What is the time limit within which a procedure must be initiated?

For the courts, the time limit is five years. For the equality body, it is three years.

d) 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,[290] and for the equality body, three years.[291]

e) 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).

Both judicial proceedings and proceedings before the equality body are expressly exempt from court taxes and fees.[292] Time limits are strictly enforced, but they are sufficient (respectively, 5 and 3 years). The equality body is located in Sofia, the capital, and cases are heard only there. The procedure before the equality body is not complex. The procedure before the courts is the general civil one, so it is no more complex than for other civil rights. Before the equality body and the courts, civil and administrative alike, lawyers are not formally required. Before the Supreme Court of Cassation only, a cassation complaint needs to be signed by a lawyer,[293] but complainants can appear unrepresented at hearings.

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

There are no such court statistics. The equality body annually does statistics concerning its own caseload but the ones for 2012 are not yet available – they are published, as part of its annual report, later in the year (2013).

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

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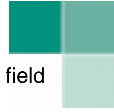
[290] Protection Against Discrimination Act, art. 75 (1).
[291] Protection Against Discrimination Act, art. 52 (1).
[292] Protection Against Discrimination Act, art. 75 (2).
[293] Civil Procedure Code, art. 284 (2).



a) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).

Before the equality body, any entity may represent an individual or another entity. In addition, any entity may bring proceedings even without victim participation/ consent. Before the courts, trade unions and public interest non-profits may represent victims, as well as join proceedings in an 'interested party' capacity.

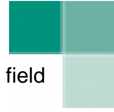
b) What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated /registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?

To represent victims before the equality body or to independently bring proceedings in their stead, entities need to be formally registered with the court as a legal person (incorporation). There is no difference in this requirement, whether victim representation or autonomous action is concerned.

To act on behalf of victims or join their lawsuits in the courts, trade unions need only be formally registered as such under general labour law. Non-profits need, in addition to incorporation, also to show before the court that their activities are in the public interest. There is no established standard on what such proof requires. Some judges have interpreted the requirement for public interest activities as a requirement for formal registration with the Ministry of Justice as a public interest organization, entailing enhanced financial and other scrutiny. This interpretation is not binding and has insufficient basis in the relevant provision. To obtain Ministry of Justice registration, non-profits need to have registered with the court that their activities fall into a list of categories provided for by law, including human rights. Registration requirements are the same regardless of whether victim representation or support is concerned.

c) Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?

Before the equality body, an entity might be required by law to produce a power-of-attorney certified by a notary public. Before the courts, plain power-of-attorney is sufficient. There are no special provisions for cases where victim consent may be



questionable. Only general rules apply and they require formal victim consent for representation of that victim. Under general rules, to validly authorize a representative before the courts, a minor (14-18) needs a parent to co-sign. For children below 14, a parent alone can authorize representation. For persons under guardianship, a signature by a guardian is required. This may cause a problem where minor or mentally disabled victims do consent to authorization, but their guardians object.

d) Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.

There is no duty on any entity to act in support or on behalf of a discrimination victim.

e) What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.

Proceedings in which entities may engage are those before the equality body, which are considered administrative and those before the general civil courts.

f) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

In court, when acting on behalf of victims, entities may seek all remedies available by law to victims, including a declaration of discrimination, compensation, other restitution, and a court order for respondent to stop and further abstain from the impugned conduct. When acting in support of victims, entities can claim a declaration of discrimination and a court order for respondent to stop and further abstain from the impugned conduct. Before the equality body, whether acting on behalf of a victim or independently in the interests of one, an entity can claim a declaration, a fine and an order on respondent to stop, prevent, or eliminate the consequences of, discrimination.

g) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

Under the law, no special rules exist on the shifting burden of proof where entities are involved. However, in at least one court case, the judge held *obiter* that the shifting burden of proof did not apply in an *actio popularis* lawsuit brought by an NGO – because, she thought, NGOs had far greater means than victims to prove discrimination.

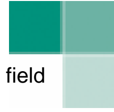
*h) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of*

associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.

Domestic law does allow entities to bring public interest lawsuits, both before the equality body and the civil courts. Before the equality body, any entity can bring proceedings alleging discrimination without identifying a specific victim. No special requirements apply; incorporation is enough. Before the courts, trade unions and public interest non-profits can take public interest legal action ‘where the rights of many parties are infringed’. Both types of entities need to be formally incorporated. Non-profits need to substantiate why their activities are publicly useful. Both trade unions and non-profits need to substantiate why the alleged act of discrimination affects many persons. There is no legal definition of ‘many’. In some court cases, judges have accepted as few as 10 to be enough. In other cases, however, judges have sabotaged the legal provision requiring that victims be enumerated, and each one – individualized. Trade unions and non-profits can seek a declaration of discrimination, and a court order on respondent to stop and abstain from the impugned conduct. No special rules apply concerning the shifting burden of proof. However, in one case the court held *obiter* that the shifting burden of proof was not meant to cases in which public interest organizations were claimants because those organizations had the necessary resources to prove discrimination, unlike victims.

*i) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Under general civil procedure law, organizations for the protection of a particular category of victims, or for the protection of persons from a particular type of violation, have standing to bring collective claims. Such claims can be brought on behalf of all victims of a single violation where their ‘circle cannot be exactly defined but is definable’. Entities would need to prove incorporation and the fact of existing ‘for the protection’ of the relevant victim category. In addition, they are expressly required by law to prove their abilities to ‘seriously and in good faith’ defend the collective interest harmed, as well as to bear the burden of taking the case, including costs and expenses. Entities will have to explicate the circumstances defining the relevant ‘circle of victims’. They can claim on behalf of all victims that a tortious action or inaction be declared unlawful, that the respondent be ordered to abort the violation, and/or to correct its consequences for the collective interest, or to pay compensation. No special rules on the shifting burden of proof apply.



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

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

The Protection Against Discrimination Act requires the burden of proof to be shifted from the claimant onto the respondent where claimant has established facts from which a conclusion for discrimination can be made.[294] The difference in the wording of this provision (Article 9 PADA) and the relevant language in the directives (Article 9 of Directive 2000/43, for instance) is basically in the word "presume" which under the Bulgarian legislation is substituted for "conclude": "facts from which it may be presumed that there has been direct or indirect discrimination" as opposed to "facts which may lead to a conclusion that discrimination has occurred". While there is in principle a difference between "conclude" and "presume", in this context it seems to be of no significance. If a conclusion of discrimination is only required to be *possible* as opposed to inescapable in order to shift the burden of proof then that should be considered relatively the same as a requirement to make possible a presumption of discrimination based on the proven facts.

Otherwise there seems to be no inconsistency between national law and EU law. The words "establish" and "prove" are equivalent. "Persons who consider themselves wronged […]" is equivalent to "the party claiming to be a victim of discrimination". The phrase "it shall be for the respondent to prove that there has been no breach of the principle of equal treatment" is also equivalent to "the respondent must prove that the right of equal treatment has not been infringed."

The problem with the Bulgarian shift of the burden of proof rule is not the language under the law per se. It is with the lack of any meaningful implementation due to the fact that judges and equality body members and staff do not understand that rule. Specialised training is needed to remedy that.

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

[294] Art. 9.

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.

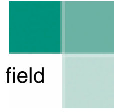
In 2012, the Supreme Administrative Court handed down (possibly) the first Bulgarian ruling to properly apply the principle of the shifting burden of proof to a discrimination case.[295] Since the start of 2004, when the Protection Against Discrimination Act entered into force, no court has applied this principle to resolve a lawsuit as professionally. The case concerns sex discrimination against an army employee. The complainant claims she was refused, in the course of a number of years, acquisition of military rank and ensuing promotion, in contrast to similarly situated male colleagues. The Court confirms the equality body’s ruling in the case, that this constitutes sex discrimination because the respondent authority failed to prove that there was a legitimate reason for treating the woman less favourably than her comparators. Therefore, the Court concluded, the real reason was her sex. The Court further reasons that it is immaterial what the woman’s supervisors’ motives were, as long as her less favourable treatment on grounds of sex was an objective fact – express recognition by the Court of the ‘irrelevance of intent’ standard.

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 people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

The Protection Against Discrimination Act expressly prohibits victimisation as a form of discrimination.[296] 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.[297] 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.[298] Therefore, any person who assisted any action against discrimination in any way is entitled to protection from victimisation.

[295] Decision N 274 of 09.01.2012 in case N 1319/2011.
[296] Art. 5.
[297] § 1.3 Additional Provision.
[298] Ibid.



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

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

Under the Protection Against Discrimination Act, the equality body has powers to impose financial sanctions between the equivalents of EURO 125 and 1250, amounts that would be dissuasive to the majority.[299] 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.[300] 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.[301] Under national law, the civil courts do not impose fines. They only award compensation for damages.

Proceedings for damages can be brought after a PADC ruled finding discrimination has entered into force. In that case, the claimant won't need to prove the fact of discrimination but will still need to prove the fact of the damages, their size, and the causal link to the fact of discrimination. Alternatively, a claimant can go directly to court, without previous recourse to PADC. Then s/he will have to prove all relevant facts, the shifting burden of proof applying.

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

There is no maximum amount of compensation.[302] The courts can award any amount that is fair.

c) *Is there any information available concerning:*

i) *the average amount of compensation available to victims?*

There is no official data concerning the average amount of compensation ordered in discrimination cases. According to unofficial estimates, the average amount of

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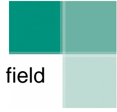
[299] Art. 78-80.
[300] Art. 81.
[301] Art. 76, Protection Against Discrimination Act.
[302] This concerns indemnification of a victim's pecuniary or non-pecuniary damages whatever those might be in the particular case, and not financial punishment by the state by decision of the equality body.

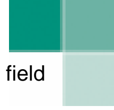


compensation for non-pecuniary damages in such cases is currently ca the equivalent of EUR 250 per person. In some cases, the courts have awarded as much as the equivalent of EUR 1500-2500. In an exceptional line of decisions concerning urban inaccessibility, the Supreme Court of Cassation has awarded EUR 5 250 each to claimants with disabilities.[303]

ii) *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

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.

[303] 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 correspond 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 Commission for Protection Against Discrimination is charged with promoting and enforcing non-discrimination as a specialised equality body.[304]

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. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.

The Commission for Protection Against Discrimination is declared independent under the law.[305] 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 Commission for Protection Against Discrimination is approved by Parliament directly.[306] The Commission for Protection Against Discrimination is accountable to Parliament only. It reports to Parliament annually.[307]

In April 2010, the government introduced a bill into parliament to reduce the members of the equality body to five (from nine). The alleged reasons were financial. As civil society protested, the government introduced another bill, reducing the number to seven instead. While criticism continued, including from intergovernmental institutions, in July parliament adopted the latter bill at first reading. Then it stalled, with no further development to date.

In addition, parliament and the president delayed over a year the appointment of new members to the equality body after the first commissioners' term of office expired. In the meantime, those commissioners continued to act. New commissioners were elected by Parliament, and appointed by the President in July 2012.

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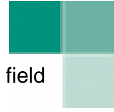
[304] Art. 40.
[305] Ibid.
[306] Art. 40 (3), Protection Against Discrimination Act.
[307] Art. 40 (5), Protection Against Discrimination Act.



The Commission's annual report for 2012 is not published yet. It will not be published until the new parliament is in place (elections are forthcoming on May 2013). According to its 2011 report, the Commission instituted 362 case files based on victim complaints, all in all. 26 of those concerned ethnicity, and one – race. Two concerned national origin, and 5 – nationality. One concerned religion. 35 concerned disability, 20 – age, 8 – sexual orientation. The rest concerned sex, multiple discrimination and other grounds falling outside the scope of EU law.

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 Commission for Protection Against Discrimination deals with discrimination on all protected grounds. It focuses on discrimination and equality, and does not deal with other human rights. The Commission for Protection Against Discrimination 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.[308] It can initiate its own proceedings at its discretion, in all fields and on all grounds, against any perpetrator.[309] It can review and give opinions on draft legislation.[310]

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?*

The Commission for Protection Against Discrimination is, further, charged with assisting victims of discrimination,[311] carrying out independent research and publishing independent reports.[312] It can also make recommendations to public authorities, including for legislative change.[313] It informs the public through the mass media on the existing legal provisions in the field of protection against discrimination.[314]

e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of*

[308] Protection Against Discrimination Act, art. 47.
[309] Ibid.
[310] Ibid.
[311] 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.
[312] Ibid.
[313] Ibid.
[314] Ibid.

discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).

Under the Protection Against Discrimination Act, the Commission for Protection Against Discrimination is expressly declared to carry out its functions independently.[315] However, considering the selection of its members by Parliament and the President, it might not be free from political dependencies.

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

The Commission for Protection Against Discrimination has standing to bring lawsuits in court, both civil ones and judicial review ones.[316] It also has standing to intervene in court proceedings as an interested party.[317] 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).

g) 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 Commission for Protection Against Discrimination 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.[318]

The Commission for Protection Against Discrimination is explicitly independent by law.[319]

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

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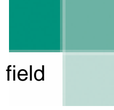
[315] Art. 40 and 47.
[316] Ibid.
[317] Ibid.
[318] Statistics concerning their caseload in 2012 are as yet unavailable; the body's annual report is not yet public, awaiting approval by Parliament.
[319] Protection Against Discrimination Act, art. 40 and 47.

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



8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

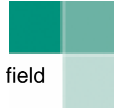
a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The information action taken by the state has been limited. Only two bodies have taken such action – the Commission for Protection Against Discrimination 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 Commission for Protection Against Discrimination 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 Development, Ethnic Issues 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 Commission for Protection Against Discrimination, 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 Commission for Protection Against Discrimination 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.[320]

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 Commission for Protection Against Discrimination, 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. In previous years, 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 Commission for Protection Against Discrimination with their input on the law or practice. The Commission for Protection Against Discrimination has not engaged important, if any, NGOs in consultations regarding amendments to the legislation it has reportedly initiated.

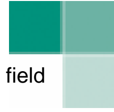
c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The Commission for Protection Against Discrimination 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 Commission for Protection Against Discrimination, are not on record to have taken any action to promote pro-equality dialogue between the social partners.

d) to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?

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

[320] 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, including suggestions on amendments in legal acts, and mediate between affected parties and institutions (the Ombudsman shall give opinions to the Council of Ministers and the Parliament on legal acts concerning the protection of human rights; shall protect children's rights, give suggestions to the Council of Ministers and the Parliament on signing and ratifying international acts in the human rights field) (art. 19 of the Ombudsman Act). This office makes no binding decisions.



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.

When adopting the Roma integration strategy, the authorities consulted pro-government Roma NGOs. However, the issue with this strategy is not its content, but its lacking implementation, including a lack of any monitoring of implementation.

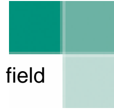
8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

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.

In 2012, a new provision was introduced in the Protection Against Discrimination Act, requiring all public authorities, including local governments, to respect the aim of not allowing any direct, or indirect discrimination, when drafting legislation, as well as when applying it.[321] This general mainstreaming duty complements the original duty under the Act for all public authorities to take all possible and necessary measures to achieve the aims of the Act.[322] Formally, this provides sufficient legal basis for bodies to revise any legislation that contradicts the Protection Against Discrimination Act. In practice, this has not been done. A failure to do so could be challenged before the Commission on general non-implementation grounds under the Protection Against Discrimination Act, there being no special provision on sanctions referring to this particular duty. The Commission could then make a declaration, and impose a sanction, as well as issue an instruction, or recommendation for implementation.

[321] Art. 6 (2).
[322] Art. 10.

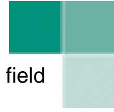


b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

There are quite a large number of rules in primary and secondary legislation still operative that contradict the Protection Against Discrimination Act.[323] A major effort is required to ensure that all laws and regulations are brought into conformity with the principle of equality.[324]

[323] For instance, to list just some examples of directly discriminatory legislation, Judiciary Act (mental health related disability ("mental illness") bar, art.162), http://www.vks.bg/english/vksen_p04_06.htm#Chapter_five;
Higher Education Act (unfettered discretion for universities to differentiate on grounds of age, race and sex, inter alia, art. 4), http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan016453.pdf;
Defence and Armed Forces Act (age bars to employment, art. 141), http://www.comd.bg/en/acts/republic-bulgaria-defence-and-armed-forces-act;
Ministry of the Interior Act (age and health bars to employment, art. 179, referring to an ordinance by the minister), http://www.mvr.bg/NR/rdonlyres/5F939B72-40AD-45AB-A78A-D09207DB695C/0/ZMVR_EN.pdf;
Diplomatic Service Act (mental disability bar, art. 27), http://www.lex.bg/bg/laws/ldoc/2135565718 - in Bulgarian;
Classified Information Protection Act (mental disability bar, art. 40), http://www.mvr.bg/NR/rdonlyres/C4EA720F-B6D3-4316-A3F9-CB4BEB9251B1/0/06_Law_Protection_ClassifiedInformation_EN.pdf;
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), http://www.comdos.bg/media/Normativna%20osnova/ADDAABCSSISBNASA-15.02.2013.doc;
Ordinance N 7 of 1993 on Noxious and Hard Jobs Forbidden for Women (sex bars to employment), http://lex.bg/bg/laws/ldoc/-551259133 – in Bulgarian.
Norms which discriminate indirectly would be far more numerous and time-consuming to identify.

[324] *First, the whole body of legislation, including statutory law and secondary legislation, which is of course quite voluminous, should be reviewed and analyzed for incompatibilities with the Protection Against Discrimination Act. Second, careful thinking should be done to devise ways to harmonize 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?

A number of structures exist within the executive, with mandates to promote and/or implement 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 Integration Issues* (NCCEII) is the body responsible for ethnic relations. NCCEII 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.[325] NCCEII is comprised of senior public officials and ethnic minorities' associations' representatives. Its tasks include promoting ethnic equality, and studying the specific problems facing ethnic minorities.[326]

At regional government level, there are *27 regional councils on ethnic and demographic issues*, which are local versions of NCCEII 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

[325] Art. 1 of the Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues within the Council of Ministers.
[326] Art. 2 (1.5) of the Regulations on the Structure and Activities of the National Council for Cooperation on Ethnic and Integration Issues within the Council of Ministers. http://www.nccedi.government.bg/page.php?category=103&id=1495.

strategies for incorporating knowledge about ethnic minorities in curricula;[327] carrying out studies; giving opinions on draft legislation; collecting and keeping data on public and private educational integration initiatives.[328]

The Council is comprised of public officials, university professors, public organizations' representatives and NGOs.[329]

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.[330] The Council is charged with developing and funding projects promoting ethnic minority students equal access to quality education.[331] It fundraises via donations by donor institutions, national, foreign or international, and a subsidy from the Ministry of Education's budget.[332]

Within the Ministry of Culture there is a *Roma Public Council on Cultural I*ssues and a *Council on Cultural Diversity* whose principal tasks are to assist the Ministry's policy of cultural integration of minorities.[333]

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* directorates are in charge of developing public policy and programmes for vulnerable groups.[334]

Another directorate within the Ministry of Labour and Social Policy, the *Demographic Development, Ethnic Issues, 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

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[327] Art. 1-2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science establishing CCECSEM.
[328] Art. 2 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science.
[329] Art. 4 of Order N Д 09-528/ 25.06.2003 of the Minister of Education and Science.
[330] Art. 1 of Decree N 4 of the Council of Ministers of 11.01.2005 establishing CEICSEM.
[331] Art. 2 of Decree N 4 of the Council of Ministers of 11.01.2005.
[332] Art. 9 of Decree N 4 of the Council of Ministers of 11.01.2005.
[333] 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.
[334] Information on the Ministry of Labour and Social Policy's Internet site at http://www.mlsp.government.bg/bg/ministry/dpt_social.htm and http://www.mlsp.government.bg/bg/ministry/dpt_inclusion.htm, in Bulgarian.

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.[335]

The national gender equality policy, too, is assigned to the Ministry of Labour and Social Policy.[336] 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.[337] The Commission comprises representatives of public authorities, social partners and NGOs.

A further relatively relevant directorate within the same ministry is the “Demographic Development, Ethnic Issues and Equal Opportunities” one.[338]

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.[339] 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.[340]

The *National Council on Integration of People with Disabilities* within the government is a similar consultative body charged with disability equality policy.[341] 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

[335] 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.
[336] Information published at the Ministry of Labour and Social Policy’s Internet site at http://www.mlsp.government.bg/equal/policy.asp, in Bulgarian.
[337] Ibid. CCEOMW was established in 2003 (ibid.).
[338] *Information at http://www.mlsp.government.bg/bg/ministry/dpt_demograf.htm.*
[339] *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.*
[340] Art. 2, Regulations on the Structure and Work Organisation of the National Council on Equality Between Women and Men.
[341] Art. 2, Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities, adopted 17.12.2004, establishing NCIPD.

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.[342]

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.[343] 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.[344]

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. The Commission for Protection Against Discrimination hears cases of alleged discrimination based on sexual orientation and religion, among other grounds, but it does not make policy.

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

There is no anti-racism or anti-discrimination National Action Plan.

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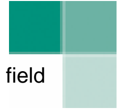
[342] Art. 3, Regulations on the Structure and Activities of the National Council on Integration of People with Disabilities.
[343] Art. 2 (1), Structural Regulations of the Agency for People with Disabilities, in force as of 1 January 2005.
[344] Ibid.



ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the main transposition and Anti-discrimination legislation at both Federal and federated/provincial level

Name of Country Bulgaria **Date 1 January 2013**

Title of Legislation (including amending legislation)	Date of adoption: Day/month /year	Date of entry in force from: Day/month/ year:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the law: Abbreviation: Date of adoption: Latest amendments; Entry into force: Where the legislation is available electronically, provide the webpage address. .			Please specify	Please specify	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/ld	16.09. 2003	01.01. 2004	Sex, race, national origin, ethnicity,	Civil law	Universal	Ban on 8 forms of discrimination (direct, indirect,

Title of Legislation (including amending legislation)	Date of adoption: Day/month /year	Date of entry in force from: Day/month/ year:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
oc/2135472223 (in Bulgarian)			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			harassment, sexual harassment, victimisation, incitement, inaccessible environment, racial segregation); universal personal scope; reasonable accommodation duties; positive duties; shifting burden of proof; specialised body to adjudicate and promote equality; judicial remedy; class actions and *actio popularis*

Title of Legislation (including amending legislation)	Date of adoption: Day/month /year	Date of entry in force from: Day/month/ year:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
			Bulgaria is a party to.			claims; NGO interveners; exemption from costs.
Integration of Persons with Disabilities Act, http://lex.bg/bg/laws/ldoc/2135491478 (in Bulgarian) Ordinance No 4 on Planning, Implementing and Maintaining Buildings in Accordance with the Requirements of an Accessible Environment for the Population, including People with Disabilities	02.09. 2004 01.07.2009	01.01. 2005 14.07. 2009	Disability Disability	Civil law Administrative law	Universal Architecture and infrastructure	Ban direct and indirect discrimination; reasonable accommodation duties employment, education, infrastructure etc.; positive measures.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country Bulgaria **Date 1 January 2013**

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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 07.05.1992	Yes 07.09.1992		Yes	Yes
Protocol 12, ECHR	No	No		No	n/a
Revised European Social Charter	Yes 21.09.1998	Yes 07.06.2000		Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	Yes 08.10.1968	Yes 21.09.1970		Yes	Yes
Framework Convention	Yes 09.10.1997	Yes 07.05.1999		n/a	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
for the Protection of National Minorities					
International Convention on Economic, Social and Cultural Rights	Yes 08.10.1968	Yes 21.09.1970		No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	Yes 01.06.1966	Yes 08.08.1966		Yes	Yes
Convention on the Elimination of Discrimination Against Women	Yes 17.07.1980	Yes 08.02.1982		Yes	Yes
ILO Convention No. 111 on Discrimination	Yes unavailable	Yes 22.07.1960		n/a	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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 Rights of the Child	Yes 31.05.1990	Yes 03.06.1991		n/a	Yes
Convention on the Rights of Persons with Disabilities	Yes 27.09.2007	Yes 26.01.2012		No	Yes

ANNEX 3: PREVIOUS CASE-LAW

Name of the court: Supreme Administrative Court
Date of decision: 6 June 2011
Name of the parties: Minister of Healthcare v. PADC
Reference number: Decision N 7924 in administrative case N 10548/2010, final;
Address of the webpage: ---
Brief summary: The Court confirms a decision by the PADC against the minister for healthcare, finding discrimination against women aged 43 or more who were excluded by regulation from access to certain methods of assisted reproduction. The Court reasoned that the impugned formal age criterion was unjustified as decisions could only properly be made on the basis of a concrete assessment of each individual woman's reproductive health status.[345]

Name of the court: Supreme Administrative Court
Date of decision: 18 January 2011
Name of the parties: Minister of Healthcare v. PADC
Reference number: Decision N 831 in administrative case N 5186/2010, final;
Address of the webpage: ---
Brief summary: The Court confirms a decision by PADC against the minister for healthcare, finding discrimination against patients of Idiopathic pulmonary hypertension/ Chronic cardiopulmonary disease who are excluded from entitlement under secondary legislation to receive medication at the state's expense, unlike other categories of patients. The Court corroborates PADC ruling that the state is under a positive duty to secure such funding.

Name of the court: Supreme Administrative Court
Date of decision: 16 December 2011
Name of the parties: Minister of Healthcare v. PADC
Reference number: Decision N 16660 in administrative case N 13532/2011, final;
Address of the webpage: ---
Brief summary: The Court orders the minister of healthcare to provide vital medication to Wilson's patients, finding a refusal to do so to constitute discrimination.

Name of the court: Supreme Administrative Court
Date of decision: 5 December 2011
Reference number: Decision N 15992 in administrative case N 12812/2011, final;
Address of the webpage: ---
Brief summary: The Court orders the Minister of Healthcare to include Alzheimer's patients in secondary legislation entitlement to state-sponsored home treatment, holding the exclusion constituted discrimination.

[345] An identical ruling in a twin case is Decision N 15601 in administrative case N 15278/2010 (final) of 25.11.2011 of the same court, the Supreme Administrative Court.

Name of the court: Supreme Administrative Court
Date of decision: 18 July 2011
Name of the parties: R.-T.H.V. v. Minister of Labour and Social Policy
Reference number: Decision N 10662 in administrative case N 6131/2011, final;
Address of the webpage: ---
Brief summary: The Court denies the Minister of Labour and Social Policy's liability for the state's omission to provide social services in the community for people with psycho-social disabilities so as to avoid their institutionalization. The Court holds that a legislative duty to exhaust possibilities for providing services to people with disabilities in the community was unmet but refused to recognize that the minister was responsible for that failure, without making it clear who was.

Name of the court: Supreme Administrative Court
Date of decision: 1 July 2011
Name of the parties: Pazardjik Municipal Council v. PADC
Reference number: Decision N 9824 in administrative case N 9292/2010, final;
Address of the webpage: ---
Brief summary: The Court confirms a decision by PADC that a local council's public order decree is in breach of the law insofar as it bans „public demonstration and expression of sexual and other orientation in public places". The Court recognizes that such a ban constitutes harassment because it creates a hostile, offensive and threatening environment for persons with non-hetero sexual orientation, impinging on their dignity.

Name of the court: Supreme Administrative Court
Date of decision: 8 July 2011
Name of the parties: K.P.D. and Kroz AD v. PADC
Reference number: Decision N 10294 in administrative case N 12449/2010, final;
Address of the webpage: ---
Brief summary: The Court rules against a newspaper for homophobic publications. It corroborates a decision by PADC that such offensive material constitutes harassment. The Court also agrees that subsequent publications targeted against the activists who complained before PADC of the initial publications constitute victimization as a separate breach of the law. The Court rejects respondent's objection that a part of the impugned publications was an interview; insofar as the editors did not dissociate themselves from the interviewee's statements, and moreover used clearly humiliating language vis-à-vis gay people, the newspaper was liable.

Name of the court: Supreme Administrative Court
Date of decision: 13 September 2011
Name of the parties: Apostolic Reformed Church and 'Prelom' Christian Centre v. PADC
Reference number: Decision N 11359 in administrative case N 13772/2010, final;
Address of the webpage: ---

Brief summary: The Court denies protection against hate speech against the Apostolic Reformed Church and its associates, holding the impugned statements against protestant communities made by an activist of the Bulgarian Orthodox Church in a newspaper interview were acceptable. Because there was nothing „concrete" in those statements (the interviewee targeting generally all protestants), there was no aim to create a hostile environment either, and accordingly, there was no such result.