

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
BULGARIA**

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Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art. 13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds?

Overview

Prejudice and discrimination against most ethnic and religious minorities is common at various levels of government, in the media and throughout society. Intolerance of Roma across society is radical, with attitudes of rejection against Roma stronger than against any other group. Roma are plagued by harassment and racially motivated violence, both civilian and official, and subjected to blatant and systemic discrimination in and exclusion from in, most importantly, education, employment, service provision, healthcare, social security, criminal justice and access to justice, suffering, as a result, severe inequality and isolation. Roma housing and education are de facto segregated and inferior, with Roma access to community services disproportionately limited and Roma living conditions deplorable. Roma access to employment is largely denied, with ca 70% unemployed. Further, Turks and Bulgarian-speaking Muslims, concentrated in underdeveloped rural areas, are affected by isolation and inequality of opportunity, suffering disproportionate unemployment, non-participation and under-representation. Negative attitudes towards non-traditional religions are strong. Non-traditional believers and Muslims are subjected to harassment and exclusion. People with disabilities are isolated, their access to public places and participation barred, and officially, including legally, segregated in education and employment, suffering, as a result, substantial inequality of opportunity. Macedonians and sexual minorities suffer intolerance and denial. Older workers suffer a disproportionate risk of unemployment and unequal career opportunities.

Both government and civil society tolerate discrimination, condoning or denying its reality, largely blaming it on the victims. Any meaningful understanding of the implications of discrimination for individuals and society is lacking. Anti-discrimination is given very little attention by the government or the media, and is not a public priority. Awareness of equal treatment by officials, the public and the legal community is very limited. Equal treatment remains marginal for policy and lawmakers and enforcers and, even, faces certain hostility. It has failed to be adequately incorporated in law and practice. Existing non-discrimination law is scarce, superficial and dispersed, lacking effective remedies, and inadequately enforced. As a result, in practice, protection is absent and discrimination, unremedied.

No comprehensive anti-discrimination law or special anti-discrimination remedies, including bodies or procedures, exist. The Constitution, which applies directly to any field and against all parties, public and private, bans discrimination on a number of grounds. Further, discrimination is banned under incorporated international law. Bulgaria is bound by all the principal relevant treaties, which are enforceable at the national level against any party, public or private, and take precedence over domestic laws. Further, various domestic laws governing specific fields, such as employment, education, criminal and tax procedure, and social assistance, prohibit discrimination on varying numbers of exhaustive grounds.¹ Other laws applicable to specific fields, such as social security, telecommunications and postal services, and power provision, instead of prohibiting discrimination, posit equality, without mentioning any grounds. A special law on disability prohibits disability discrimination in any field and by any party.

Non-discrimination clauses are dispersed, unharmonised, differing in terminology, protected grounds and scope. The level of protection afforded to the various grounds is not uniform. All provisions are

¹A single non-exhaustive anti-discrimination provision exists under the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools, which prohibits discrimination inclusively on any ground unrelated to education, in addition to a number of grounds expressly listed.

abstract and schematic, limited to declaring that discrimination is banned. Very few are accompanied by definitions, and those which are appear unclear and inconsistent with EU law, and are restricted in application to the particular areas concerned. Equality law's overall clarity and foreseeability is insufficient, as very few concrete prohibitions of specific discriminatory conduct are provided for and there is no elaborating case law. The provisions are not harmonised, differing in terminology, protected grounds, and scope. There is no effective remedy.

Existing provisions are declaratory and lack enforcement. Victims rarely seek redress, few being aware that the right to equal treatment is actionable. The fact that legal aid is not provided in civil matters acts as a barrier to access to justice. This affects most critically the Roma, who, often illiterate, severely excluded and deprived, have little access to information about remedies and procedures. Anti-discrimination litigation is but developing. Enforcement authorities, including judges, have inadequately responded to discrimination complaints which have been mostly sponsored by rights groups. Lacking anti-discrimination training,² in a legal environment devoid of an anti-discrimination culture, judges and other officials are obstructed in applying domestic anti-discrimination law because of its broad and unspecific provisions. Faced with discrimination allegations, they tend to ignore them, preferring instead to deal with other issues the particular facts give rise to, or blankly to deny them, refusing thereby victims access to a court. To date, only two judgments have been given against discrimination, and not a single administrative decision.

Drafted and proposed by Government in broad consultation with civil society, a comprehensive Prevention of Discrimination Bill incorporating all relevant EC Directives has been pending with Parliament since September 2002. In more than one aspect, including defining expansively a number of additional concepts, the bill goes beyond EU law. It provides for extensive uniform protection of all grounds covered under the Directives, among other grounds, applicable to the exercise of any right, including the scope of Directive 2000/43 EC. It prohibits discrimination by presumption and association, providing for detailed concrete prohibitions of specific discriminatory conduct in key fields, such as employment, education and service provision, envisaging enhanced safeguards and specific effective remedies. The bill provides for both general and specific duties on authorities, employers and educational institutions to take positive measures. It sets up a strong independent body for the protection and promotion of equal treatment, consisting of three specialised subcommittees on race, sex and other discrimination. It has powers, most notably, to receive complaints, conciliate parties, investigate, find and sanction breaches, issue binding instructions and orders, review legislation, propose to authorities to amend their discriminatory acts and to take positive measures, challenge administrative acts in court, consult persons on their rights and duties in equality law, and act as an *amicus curiae*. Further, the bill provides for effective judicial protection, including standing for NGOs to bring anti-discrimination actions on their own behalf, and collective actions by victims and NGOs. Sanctions under the draft are substantial and time limits beneficial to victims.

Public debate on the bill has been scarce and superficial, negatively focusing on sexual minorities, and flippantly, on sexual harassment. The bill was stalled within Parliament by objections against its detailed and comprehensive nature, and enhanced safeguards and remedies, seen by critics as redundant.

Recently, a version of this bill was drafted within Parliament, substantially reducing the level of protection and the potential for effective enforcement, as well as the consistency with EU law. The new draft version, a Protection Against Discrimination Bill, lacks any specific prohibitions of particular discriminatory actions, a duty to provide reasonable accommodation, or requirements for positive measures. It weakens the powers of the Commission, by taking out powers required under Directive 2000/43, and its specialised subcommittees on race and sex discrimination, and diminishing judicial protection.

²Several seminars conducted by the National Council on Ethnic and Demographic Issues in late 2002 and early 2003 for judges, prosecutors and police have been the only anti-discrimination training for officials to date.

The Constitution expressly bans discrimination on grounds of race/ethnicity, extraction (national origin), sex, origin, religion/belief, education, political affiliation, personal and social status, or property.³ It does not ban discrimination on grounds of age, disability, and sexual orientation.⁴ The constitutional non-discrimination guarantee is all encompassing, the Constitution being directly applicable to any field at any enforcement level and by any authority, and enforceable against any party, public or private, and binding on Parliament. Accordingly, no act of Parliament, including any law, may provide for discrimination on grounds of race/ethnicity, or religion/belief. Any law declared unconstitutional by the Constitutional Court will not be implemented. Any court may enforce the constitutional prohibition of discrimination in a matter brought before it. As the Constitution overrules all other laws, the courts may apply the constitutional prohibition of discrimination in precedence over discriminatory legislation.

In practice, however, direct enforcement of the Constitution, including the non-discrimination clause, has been rare and fragmented. Judges and other officials have been wary of applying directly the broadly formulated constitutional provisions, especially in precedence over specific statutes. Still, the two existing judgments against discrimination are based on the constitutional, as well as international law anti-discrimination which guarantees protection against discrimination.

Racial and religious discrimination are prohibited under incorporated international law.⁵ Binding international equality guarantees are an integral part of domestic legislation, binding all private and public parties, and directly applicable at the domestic level. International provisions take precedence over domestic legislation, except for the Constitution, which they must be in accordance with.⁶ Domestic courts may apply international law directly in matters before them, including in precedence over legislation. However, in practice, similarly to the Constitution, international law, including non-discrimination guarantees, has only been applied directly in a fragmented manner, reducing significantly the potential for direct international anti-discrimination protection. Binding international non-discrimination guarantees vary in scope depending on the particular instrument, most governing the exercise of human rights and basic liberties.

Discrimination on grounds of religion in any field is prohibited under the recent Denominations Act, binding on both private and public parties.⁷ This prohibition has not yet been enforced. No generally applicable statute prohibits racial discrimination.

Discrimination on grounds of race/ethnicity, and religion/belief is expressly prohibited under laws governing specific fields, including the Criminal Procedure Code,⁸ the Tax Procedure Code,⁹ the Labour Code,¹⁰ the Civil Servant Act,¹¹ the Promotion of Employment Act,¹² the Child Protection Act,¹³ the Social Assistance Act,¹⁴ the National Education Act,¹⁵ the Higher Education Act,¹⁶ the

³Article 6 (2).

⁴Theoretically, age, disability and sexual orientation may arguably be implied in "personal status," whence a constitutional prohibition of discrimination on these grounds may be inferred. However, no case law of the Constitutional Court provides a basis for such argument, and it may not have any practical value.

⁵Including the International Covenant for Civil and Political Rights with its First Optional Protocol; the International Covenant for Economic, Social and Cultural Rights; the International Convention for the Elimination of All Forms of Racial Discrimination; including a declaration of acceptance of the competence of the United Nations Committee on the Elimination of Racial Discrimination under Article 14 of the Convention; the European Convention on Human Rights, including the First Protocol and Protocols N 4, N 6 and N 7; the Framework Convention for the Protection of National Minorities; the Revised European Social Charter and its Additional Protocol providing for a System of Collective Complaints; ILO Convention N 111 Concerning Discrimination in Respect of Employment and Occupation; and the UNESCO Convention against Discrimination in Education. However, Bulgaria has not signed Protocol N 12 to the European Convention on Human Rights.

⁶Article 5 (4) Constitution.

⁷Articles 3, and 4 (1) and 4 (4).

⁸Article 10 (1).

⁹Article 9 (2).

¹⁰Article 8 (3).

¹¹Article 7 (4).

¹²Article 2.

¹³Article 10 (2).

¹⁴Article 3.

¹⁵Article 4 (2).

Asylum and Refugees Act,¹⁷ the Defense and Armed Forces of the Republic of Bulgaria Act,¹⁸ the National Chitalishta Act,¹⁹ the Electing a Great National Assembly Act,²⁰ the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools,²¹ and the Professional Ethics Code²² (medical profession). The Additional Voluntary Pension Security Act,²³ and the Dentists' Professional Ethics Code²⁴ prohibit specific discriminatory treatment on grounds of race/ethnicity, and religion/belief. The Radio and Television Act²⁵ requires specific equality action on grounds of ethnicity. The Consumers Protection and Rules of Commerce Act prohibits discriminatory advertising,²⁶ while the Radio and Television Act prohibits broadcasts of such advertising.²⁷

The scope of these non-discrimination provisions is limited to the particular fields they govern. Within their scope, they apply unless a special (a *lex specialis* as opposed to *lex generalis*) law derogates from them. Where applicable, they are imperative and binding on any public or private party. Any secondary legislation or administrative act in matters to which they are applicable must comply with them. If not, it is unlawful and subject to repeal. In practice, none of these provisions has been enforced, except the bans on discriminatory advertising under the Consumers Protection Act, which were successfully invoked in a sex discrimination case. However, these bans have not been implemented against racial or religious discrimination.

The European Social Charter Revised²⁸ prohibits discrimination on grounds of health status, while disability, age and sexual orientation discrimination is implicitly prohibited under international catch-all provisions, including under the European Social Charter Revised,²⁹ the European Convention on Human Rights,³⁰ the International Covenant on Economic, Social, and Cultural Rights,³¹ and the International Covenant on Civil and Political Rights.³²

Disability discrimination is prohibited under the Protection, Rehabilitation, and Social Integration of Invalids Act,³³ applicable to any party and in any field, unless a special law takes precedence in a particular field. Disability discrimination is further prohibited under the Labour Code,³⁴ the Promotion of Employment Act,³⁵ and the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools.³⁶ Specific discriminatory conduct on grounds of health status is prohibited under the Additional Voluntary Pension Security Act,³⁷ and the Dentists' Professional Ethics Code.³⁸ The scope of these provisions is limited to the specific fields they govern, binding any party. In practice, no prohibition of disability discrimination has been enforced.

16Articles 4 and 22.4.

17Article 20.

18Article 97 (1).

19Article 2 (1).

20Article 3.

21Article 3.

22Article 7.

23Article 78 (2), prohibiting employers from denying security to an employee on grounds of, *inter alia*, race, ethnicity, or religious beliefs.

24Article 11 (2), prohibiting dentists from denying care to individuals on grounds of, *inter alia*, race, religion, or ethnicity.

25Article 6 (3.3), requiring operators to protect the education and culture of all citizens irrespective of ethnicity.

26Article 29 (2) in conjunction with Article 34.1. Grounds include, apart from race/ethnicity and religion, also sex, nationality, political beliefs, age, and physical and mental abilities (Article 34.1).

27Article 76 (2). Grounds include apart from race/ethnicity and religion, also sex, nationality and political belief, as well as any other ground.

28Article E (other status).

29Article E (other status).

30Article 14 (other status).

31Article 2.2 (any other ground).

32Article 2.2 (any other ground).

33Promulgated 27.12.1995, last amended 2.08.2002. Article 5a.

34Article 8 (3).

35Article 2.

36Article 3.

37Article 78 (2), prohibiting employers from denying security to an employee on grounds of, *inter alia*, health status.

38Article 11 (2), prohibiting dentists from denying care to individuals on grounds of, *inter alia*, race, health status.

Age discrimination is prohibited under the Labour Code,³⁹ the Promotion of Employment Act,⁴⁰ the Higher Education Act,⁴¹ the Social Assistance Act, the National Chitalishta Act,⁴² the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools,⁴³ and the Professional Ethics Code.⁴⁴ The scope of these provisions is limited to the specific fields they govern, binding any party. Not one of these provisions has been enforced.

Age and disability discriminatory advertising is prohibited under the Consumers Protection and Rules of Commerce Act,⁴⁵ while the Radio and Television Act⁴⁶ implicitly prohibits broadcasting such advertising. Sexual orientation discrimination is only expressly prohibited under the Promotion of Employment Act.⁴⁷ Implicitly, it is prohibited under the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools.⁴⁸ The scope of these provisions is limited to the specific fields they govern, binding any party. They have not been enforced.

Discrimination on all grounds covered under the Directives is implicitly prohibited under legislation stipulating equal status without listing any grounds, including the Mandatory Social Security Code,⁴⁹ the Health Security Act,⁵⁰ the Physical Training and Sports Act,⁵¹ the Judiciary Act,⁵² the Telecommunications Act,⁵³ the Postal Services Act,⁵⁴ the Power Engineering and Power Efficiency Act,⁵⁵ Ordinance N2 of 16.03.1999 on Granting Individual Licenses for [...] Cable Telecommunications Networks for Distribution of Radio and Television Programmes,⁵⁶ Ordinance N2 of 1.09.1999 on Granting an Individual License for [...] a System of Telephone Devices for Public Use,⁵⁷ Ordinance N10 of 3.06.1993 on Internal Control within Banks,⁵⁸ Ordinance on the Terms and Procedure for Access of Privileged Consumers and Independent Producers of Electric Energy to Electric Transportation and Distribution Networks,⁵⁹ and the Ordinance on the Terms and Procedure for Access of Privileged Consumers and Enterprises for Natural Gas Extraction to Gas Transportation and/or Distribution Networks.⁶⁰ Blank equality provisions, binding on any party within their specific scope, have not been implemented.

To recap, the scope of protection under existing law of the various grounds of discrimination covered by the Directives varies. Only race, ethnicity and religion have express constitutional protection. Apart from these, only disability is protected in general terms, by statute. All grounds benefit from specific statutory protection in certain fields. The number of protected fields varies substantially over the different grounds, with race/ethnicity and religion/belief protected in the most fields, disability next,

39Article 8 (3).

40Article 2.

41Articles 4 and 22.4.

42Article 2 (1).

43Article 3.

44Article 7.

45Article 29 (2) in conjunction with Article 34.1.

46Article 76 (2), prohibiting discrimination on any ground, apart from those expressly stated.

47Article 2.

48Article 3, prohibiting discrimination on any ground unrelated to education, in addition to a number of expressly stated grounds.

49Article 3.3.

50Article 5.5 and 5.6.

51Article 41 (1.5), requiring the state and sports organisations to take all measures against "all forms of social discrimination."

52Article 5 and 6, requiring courts to apply the laws equally to all, and to ensure equality and equal adversary conditions for both parties.

53Articles 57 (1.6), 82, 83 (1.1) and (1.2), 90, 111 (2), and 113 (1.1).

54Articles 21 (1), 53.1, and 66 (2.2).

55Articles 20 (2), 56 (3), 84 (1.5), 86 (1.3), 102.1, 129.4, and 130.3.

56Article 10.9.

57Article 9.9.

58Article 9 (5.4).

59Article 7 (2).

60Article 7 (2).

followed by age, and sexual orientation last, being only expressly protected in access to employment and vocational training through the Employment Agency.

Notwithstanding the differing scope of protection under the law, in the absence of elaborate provisions and effective remedies, the enforceable protection is similarly inadequate for all grounds. There have been only two judgments against discrimination, one against a racist refusal of access to public services, and one against sex discriminatory advertising. No prohibition of disability, age or sexual orientation discrimination has been enforced.

The Prevention of Discrimination Bill, expressly aimed at guaranteeing equal treatment, equal opportunities and effective anti discrimination protection, prohibits discrimination on a number of exhaustive grounds, including all covered under the Directives.⁶¹ The extensive protection under the draft is uniform for all grounds, including all those covered under the Directives, in terms of scope, safeguards and remedies. The draft is a comprehensive anti-discrimination law meeting all of the Directives' requirements.⁶² It prohibits and defines, as forms of discrimination, direct and indirect discrimination, harassment, sexual as well as on any other protected ground, incitement to discrimination, victimisation and racial segregation. Any individual or entity, or informal association of individuals is protected. The prohibition is all encompassing, covering, similarly to Protocol 12 of the European Convention on Human Rights, the exercise of any right. It binds all parties, private, as well as public.⁶³ The draft provides for a shift in the burden of proof, and authorises positive measures, placing framework duties on authorities to take such measures. Detailed prohibitions on specific types of discriminatory conduct in key fields, such as employment, education and service provision, are provided for. Special anti-discrimination remedies are envisaged, including a specialised independent body with broad powers to promote and protect equal treatment. The body, regulated in detail both institutionally and procedurally, receives and investigates complaints, finds breaches and imposes sanctions, proposes and reviews legislation and policies, and collects and disseminates information relative to equality. Victims of discrimination and NGOs are further entitled to a special anti-discrimination action, which may become collective where joined by other individuals or NGOs, to seek judicially ordered termination of discrimination, and redress, including *restitutio in integrum* and compensation.

Drafted within Parliament, a version of the Prevention of Discrimination Bill was proposed, substantially undermining the protection envisaged by the former by eliminating certain provisions, while reproducing, for the most part, literally, the remainder. The version, a Protection Against Discrimination Bill, reduces the level of protection and enforceability by eliminating all concrete prohibitions on specific discriminatory conduct in employment, education, services, etc.; the express general and specific duties for public authorities, employers and educational institutions to take positive measures; employers' and educational institutions' duties to act to prevent discrimination by third parties at the work/study place, and their liability for third party discrimination, where they fail to do so; educational institutions' duties to provide reasonable accommodation; the Commission's specialised subcommittees on race and sex discrimination - instead the Commission's Chair may, at discretion, appoint specialised panels, but these have no separate reporting duties within the Commission's annual report; the Commission's powers to organise research, education and training; to issue codes of good practice; to promote its activities and the equality principle; to recommend to authorities to undertake specific positive measures; and to collect and process data; the express provision for an all-encompassing scope (material and personal); victims' standing to seek damages in judicial anti-discrimination proceedings – instead, after the anti-discrimination proceedings are concluded, victims need to file a separate claim for damages, and undergo another set of proceedings to receive compensation; NGOs' standing to bring judicial actions against discrimination on their own behalf, where the equality rights of many are affected is reduced exclusively to cases of multiple discrimination; collective judicial actions to defend equality rights by individuals and NGOs; the definition of family status as a protected ground (including marital status and certain caring

⁶¹Draft Article 4 (1). All references and citations concern the text of the draft as it stood at the time it was adopted by the Council of Ministers and proposed to Parliament.

⁶²Certain of the exemptions provided for fail to meet the Directives' requirements of justifiability by legitimacy of aim and proportionality of means (see section on Exemptions).

⁶³Draft Article 13.

responsibilities); the express inclusion of family status and skin colour among the protected grounds. The Parliamentary draft, as opposed to the Government draft, fails to ensure compliance with European law by eliminating employers' duties to provide reasonable accommodation; the Commission's power to assist victims of discrimination (under the Government draft, by consulting parties on their rights, duties and remedies under equality law), and to monitor the state of equality and periodically report on it, as well as its duty to cooperate with NGOs. Further, the Parliamentary draft expands the list of protected grounds under the Government's draft to include a number of additional grounds, such as education and property status, and any other grounds provided by domestic or binding international law. Having in mind the material scope of the prohibition of discrimination, in particular of indirect discrimination, the implications of protecting such additional grounds could cause the implementation of the entire law to backfire.⁶⁴

Neither the Parliamentary, nor the Government draft, provide for territorial subdivisions of the Commission, or for the status of existing anti-discrimination provisions with respect to the future anti-discrimination law.

If the legislation to be adopted fails to envisage specific prohibitions on particular discriminatory acts, its provisions will remain abstract and schematic, resulting in inadequate legal and social clarity regarding the rights and duties in equality law, which will obstruct the latter's effective implementation. The fact that abstract prohibitions of discrimination are inadequately clear and foreseeable, leading to a lack of enforcement, is well illustrated by the absence of enforcement of the existing abstract prohibitions (to date, there have only been two judicial rulings against discrimination, and not a single administrative decision). Schematic, abstract provisions do not satisfy ECJ case law requiring laws incorporating EC Directives to be sufficiently detailed and elaborate to ensure clarity and foreseeability, nor equivalent requirements of the European Court of Human Rights' in order for domestic laws to be "law" within the Convention's meaning. If the legislation fails to set up specialised subcommittees to deal with and report on racial and sex discrimination, equality protection risks being undermined. Absent grounds-specific bodies in an environment rich with anti-minority bias and lacking anti-discrimination awareness, certain grounds, especially race, risk receiving less protection through neglect or unawareness. Specialised subcommittees with separate reporting duties ensure enhanced accountability by breaking down by grounds the Commission's work and reporting. If existing anti-discrimination provisions are not repealed, those, as special rules, will be in a position to derogate from the general anti-discrimination law in their respective fields, with the effect of derogating from the Directives.

To recap, existing law and practice do not guarantee enforceable equal treatment. The Prevention of Discrimination Bill, if enacted as it stands,⁶⁵ promises to remedy this deficiency, while the Protection Against Discrimination Bill may fail to do so.

Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law?

Racial/ethnic origin, religion/belief, and sexual orientation are not defined. Certain unharmonised definitions concerning age⁶⁶ and disability⁶⁷ exist for the purposes of particular laws, but not specifically for anti-discrimination purposes. Neither the use of terminology, nor the existing definitions are harmonised. Implicitly applicable to non-discrimination, the Protection, Rehabilitation and Social Integration of Invalids Act defines "an invalid" as "anyone, regardless of age, with a

⁶⁴For instance, the prices of expensive goods and services could be argued to constitute indirect discrimination on grounds of property status, while a requirement for higher legal education in order to gain membership with a bar association could constitute direct discrimination on grounds of education. No exemptions are provided for under the Parliamentary draft to address those issues.

⁶⁵Apart from necessary correction regarding justifiability of certain exemptions (see below, section on Exemptions).

⁶⁶The Child Protection Act defines "a child" as "any natural person prior to 18 years of age" (Article 2). The Promotion of Employment Act implicitly defines "young people," and expressly defines "an adult." Title III of the Act is entitled "Programmes and Measures for Employment of Young People," while its provisions refer to "unemployed persons of less than 29 years of age" (Articles 34 (1), 35 (1), and 36 (1)). Under § 1.18 Additional Provision of the Act, an "adult" is defined as "any person of, or above working ability age."

⁶⁷Including invalidity, invalid, disabilities, persons with disabilities, reduced/lost working ability, health status.

physical, sensor or mental disability, which hampers social integration and participation, communication and training abilities, or labour fulfilment.”⁶⁸ The Act defines an “invalid with a long-term disability” as a person whose working ability was officially determined to be reduced by 50 % or more.⁶⁹ Decree N19 of 3.10.2000 on Determining Invalidity in Children under 16 Years of Age⁷⁰ defines disability as “a long-term restriction, or lack of ability in a child to adapt to the environment (“social adaptation”) in the manner and to the extent to which a healthy child of that age does.”⁷¹ The Decree on the Evaluation of Working Ability, whose principal legal term is “long-term reduced or lost working ability or, long-term reduction or loss of working ability,” by alternatively using “invalidity,” implicitly defines disability as a long-term reduction or loss of working ability.⁷² Under the Decree, the degree of long-term reduction or loss of working ability (disability) is to be measured in a percentage with reference to a “healthy person,” which is undefined.⁷³ The leading criterion for evaluating the degree of reduction of working ability is an “expert appraisal of the functional deficit caused by an illness.”⁷⁴ Thus, the law implicitly defines the principal element of reduced or lost working ability (disability) as a “functional deficit.” Similarly, the Mandatory Social Security Code,⁷⁵ governing state security, including disability security, interchangeably uses “invalidity” and “reduced working ability” (“working inability”), expressly defining neither one, implicitly defining both by stipulating that degrees of long-term reduction of working ability (disability) be measured in a percentage with reference to a healthy person's abilities, which is undefined.⁷⁶ Not one of the existing definitions have been implemented in an anti-discrimination context.

Both anti-discrimination bills define “sexual orientation” as “heterosexual, homosexual, or bisexual orientation,”⁷⁷ but do not define other grounds covered by the Directives.

To recap, only disability is currently defined, for purposes other than anti-discrimination.

Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?

The Constitution and the Foreigners Act authorize nationality differentiation if provided for by law.⁷⁸ Nationality differentiation is prohibited under certain laws in a fragmentary and unharmonised manner.⁷⁹ The Framework Convention on the Protection of National Minorities,⁸⁰ the European Social Charter Revised,⁸¹ and the European Convention on Human Rights⁸² ban discrimination on grounds of belonging to a national minority. Discrimination on these grounds is prohibited under the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of

68§ 1.3 Additional Provisions.

69§ 1.4 Additional Provisions.

70Issued by the Minister of Health Care.

71Article 1 (1).

72Chapter Four is entitled “Determination of Long-term Reduced or Lost Working Ability (Invalidity).” Among other provisions in Chapter Four, Article 91 uses both terms interchangeably. Article 91.1 uses “long-term reduced or lost working ability,” and Article 91.2 uses “invalidity,” while Article 91.4 uses both as equivalents. Article 91.5 uses both “invalidity” and “disability.”

73Article 91.1.

74Addendum N 2 to Article 93 (3), II.

75Promulgated 17.12.1999, last amended 29.11.2002.

76Article 14 (2).

77Draft Additional Provision § 1.4.

78Respectively, Article 26 (2), and Article 3 (1).

79Including the National Health Act, regarding urgent medical aid provision (Article 28 (1)); the Code of Commercial Navigation, limited to EU nationals, regarding employment and working conditions, including pay (Article 88 (2)); the Commercial Act, regarding creditors' rights in bankruptcy proceedings (Article 616 (3)); the Foreign Investment Act (Article 2); and Ordinance N 21 of 4.07.2001 on the Terms and Procedure for Acknowledgment of Organisations of Agricultural Producers (Article 5 (2.1)), Ordinance N 23 of 5.07.2001 on the Terms and Procedure for Acknowledgment of Organisations of Tobacco Producers (Article 5 (2.4)), and Ordinance N 24 of 5.07.2001 on the Terms and Procedure for Acknowledgment of Organisations of Fruit and Vegetables Producers (Article 5 (2.1)), all regarding access to membership. The Protection of Consumers and Rules of Commerce Act prohibits discriminatory advertising on grounds of, *inter alia*, nationality (Article 29 (2) in conjunction with Article 34.1), while the Radio and Television Act prohibits broadcasting of advertising, which discriminates, *inter alia*, on grounds of nationality (Article 76 (2)).

80Article 4.

81Article E.

82Article 14.

Education Completed in Foreign High Schools.⁸³ Provisions stipulating equal status without mentioning any grounds may implicitly ban nationality differentiation and discrimination on the grounds of membership of national minority discrimination.⁸⁴

The Constitution, incorporated international law, or domestic statutes ban discrimination on grounds of extraction, sex, origin, social origin, education, personal status, birth status, family status, social status, official status, property status, hereditary status, political status, political affiliation, political beliefs/opinion/convictions, membership of political organisations, membership of trade unions or other public organisations or movements, (skin) colour, language, and descent. These grounds, their correlation, or their relation to the grounds covered under the Directives are not defined.⁸⁵ There has been no enforcement of these bans, except for one judgment against sex discriminatory advertising, dating from April 2003.⁸⁶

The Prevention of Discrimination Bill bans discrimination on grounds of sex, skin colour, political belief, family status and origin.⁸⁷ It prohibits nationality differentiation, unless sanctioned by law, meaning that no authority or private person can differentiate on grounds of nationality, unless a statute authorises it.⁸⁸ The draft defines “on grounds of” as “on grounds of the actual, present or past, or perceived existence of one or more [grounds] in a person discriminated against, or in another the former is related to, or is perceived to be related to, where such relation is the cause of discrimination.”⁸⁹ “Related persons” are defined as spouses, relatives, a trustee and a person under custody, de facto spouses, an employer and an employee, a person taking part in managing another's partnership, partners, others on whom a victim of discrimination may be deemed to be directly or indirectly dependent, and persons accompanying a victim of discrimination when discrimination takes place.⁹⁰ “Family status” is defined as marital status, or a caring responsibility for a minor family member, or an elderly family member, or a disabled family member.⁹¹

The Parliamentary Protection Against Discrimination Bill bans discrimination on a number of additional grounds, such as education and property status, including any other grounds provided by domestic or binding international law.

Both existing and draft law covers a number of grounds, apart from those covered by the Directives.

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?

There is no generally applicable definition of direct or indirect discrimination.⁹² Incorporated international law definitions are applicable to human rights.⁹³ However, in the two discrimination cases won to date, the courts have invoked definitions under ICERD and ICEDAW, even though the

83Article 3.

84Such as the Mandatory Social Security Code (Article 3.3), the Health Security Act (Article 5.5-5.6), the Judiciary Act (Articles 5-6), the Telecommunications Act (Articles 57 (1.6), 82, 83 (1.1) and (1.2), 90, 111 (2), and 113 (1.1)), the Postal Services Act (Articles 21 (1), 53.1, and 66 (2.2)), and the Power Engineering and Power Efficiency Act (Articles 20 (2), 56 (3), 84 (1.5), 86 (1.3), 102.1, 129.4, and 130.3).

85No definition exists of the relationship between racial/ethnic origin, and skin colour, nationality, membership of a national minority, or origin.

86For more details see below, section on Remedies.

87Draft Article 4 (1).

88Draft Article 12 (1.1).

89Draft Additional Provision § 1.2.

90Draft Additional Provision § 1.3.

91Draft Additional Provision § 1.5.

92The Constitution does not define discrimination. The Constitutional Court has interpreted the principle of equality before the law to prohibit any “privileges or restrictions” on any of the grounds listed under the constitutional anti-discrimination clause (Constitutional Court Ruling N 14 of 10 November 1992). A concept of discrimination as “privileges or restrictions of rights” is further inferable from the language of domestic non-discrimination clauses. For more detail, see “Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria”, September 2001, European Roma Rights Center, Interights, Migration Policy Group.

93Binding international law definitions include those under ICERD, ICEDAW, ECHR, ESCR, UNESCO Convention against Discrimination in Education, ILO Convention N 111. For more details, see “Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria”, September 2001, European Roma Rights Center, Interights, Migration Policy Group.

rights affected were not human rights.⁹⁴ Therefore, domestic courts tend to extend the scope of international definitions, applying them generally. Further, three domestic laws governing specific fields provide for definitions applicable to those fields.

The Labour Code, applicable to employment, defines indirect discrimination⁹⁵ as “apparently lawful solutions applied with reference to the [grounds] in a manner which puts, in reality and in fact, certain employees in a more unfavourable, or privileged, position regarding the others.”⁹⁶ The law exempts “differences or preferences based on the qualification requirements for carrying out a particular job, and special protection for certain employees (minors, pregnant women and mothers of young children, invalids, reassigned persons and so on) provided for by legislation.”⁹⁷ Instead of an “apparently neutral provision, criterion or practice,” the reference is to “apparently lawful solutions.” The extent to which “lawful” corresponds to “neutral,” or “solutions,” to “provision, criterion, or practice,” is a matter of interpretation, allowing for divergence from the Directives.⁹⁸ The phrase “applied with reference to the [grounds]” raises an issue, in the context of indirect discrimination.⁹⁹ The requirement that “solutions” be “applied in a manner which puts [...] in a more unfavourable position” implies that a disadvantage is caused not by a “solution” itself, but, rather, by the manner in which it is applied, implying the existence of more than one way to apply a “solution,” which may not be true in many cases. Further, the implication is that, were a “solution” to be applied in another manner, potentially it would not cause a disadvantage, hence, would not be discriminatory. Substituting the cause of disadvantage (under the Directives, provision etc.) for another (the manner of application), produces a lack of clarity, potentially leading to implementation inconsistent with the Directives. Subjecting the manner of application, rather than a “solution” itself, to review, may result in a lack of protection against inherently indirectly discriminatory “solutions.” Instead of a hypothetical disadvantage (under the Directives, “would put”), the requirement is for actual disadvantage (“in reality and in fact”), limiting the scope of the prohibition. Unless actual disadvantage is established, indirectly discriminatory “solutions” will be tenable and no protection will be accorded where a disadvantage has not yet been suffered, regardless of why, or of its probability, or, where a disadvantage is difficult to establish, regardless of how clearly inherent its causal relationship to a “solution.” A beneficial impact as well as an adverse impact is prohibited, which is questionable from the standpoint of the Directives. There is no objective justification test. Instead, direct “differences or preferences” are justified, raising an issue of basic compatibility.

The Promotion of Employment Act and the Protection, Rehabilitation and Social Integration of Invalids Act reproduce the Labour Code definition.¹⁰⁰ While the Labour Code and the Promotion of Employment Act definitions apply to discrimination on all grounds covered under the Directives,¹⁰¹ in employment, respectively, access to employment and vocational training through the Employment Agency, the Invalids Act applies to disability discrimination in any field.

The Invalids Act defines direct discrimination as putting “an invalid in a more unfavourable situation compared to other persons because of his disability.”¹⁰² A hypothetical difference (under the Directives, “would be treated”) is excluded. There is no “in a comparable situation” requirement. The Promotion of Employment Act defines direct discrimination as where “certain workers are treated, have been treated, or would be treated in a comparable situation more favourably than others in relation to any ground [stated under the law].”¹⁰³ Questionably under the Directives, this prohibits more favourable, instead of less favourable treatment.

⁹⁴One case concerned access to publicly available services, and the other, commercial advertising. For detail, see section on Remedies below.

⁹⁵It does not define direct discrimination.

⁹⁶§ 1.7.

⁹⁷*ibid*.

⁹⁸“Solutions” is no legal term, and is not defined.

⁹⁹Should the manner of application of a “solution” vary with reference to race, for instance, what is involved is direct, and not indirect, discrimination. Ambiguity of this magnitude may mean a complete failure in implementation.

¹⁰⁰Article 5a (3) Invalids Act and §1.20 Promotion of Employment Act.

¹⁰¹Excluding sexual orientation regarding the Labour Code.

¹⁰²Article 5a (2).

¹⁰³§1.19.

Existing definitions are unharmonised and fragmented in scope. They have not been implemented. The Prevention of Discrimination Bill defines both direct and indirect discrimination in compliance with the Directives. Direct discrimination is “more unfavourable treatment of a person on grounds [stated under the law] than another person is, has been, or would be treated in comparable circumstances.”¹⁰⁴ Indirect discrimination is “putting a person on grounds [stated under the law] in a more unfavourable position compared with other persons, through an apparently neutral provision, criterion, or practice, unless such provision, criterion, or practice is objectively justified by a lawful aim, which is unrelated to any of the grounds [...], and the means for accomplishing such aim are appropriate and do not exceed what is necessary for accomplishing it.”¹⁰⁵ While ambiguous, the language “[...] on grounds [stated under the law]” means to characterise the victim as a person who has any of the protected characteristics, such as a particular race, or sexual orientation. The draft version of the Protection Against Discrimination Bill reproduces the Prevention of Discrimination Bill definitions.

In terms of definitions, existing law does not correspond to the Directives, while draft law does.

Does national law define harassment, as defined in the Directives?

National law neither prohibits, nor defines harassment within the meaning of the Directives.¹⁰⁶

Under both anti-discrimination bills, harassment on all grounds covered in the Directives constitutes discrimination.¹⁰⁷ It is identically defined as “any unwanted conduct on grounds [...], expressed either physically, or verbally, or in any other manner, having the purpose or effect of violating a person's dignity, or of creating a hostile, offensive, degrading/humiliating, or intimidating environment, attitude, or practice.”¹⁰⁸ This definition goes beyond the Directives, requiring violation of personal dignity, or creation of a hostile etc., environment alternatively, as opposed to cumulatively.¹⁰⁹

In terms of harassment, existing law does not reflect the Directives, while draft law does.

Are there any existing or forthcoming Codes of Practice on harassment?

No Codes of Practice on harassment exist or are forthcoming. Under the Prevention of Discrimination Bill, the anti-discrimination Commission is mandated to issue anti-discrimination codes of practice, implicitly including one on harassment.¹¹⁰ Under the Protection Against Discrimination Bill, it lacks such power.

Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?

Criminal law prohibiting incitement to racial discrimination may be construed as prohibiting instructions to discriminate.¹¹¹ However, this does not conform to the Directives. Criminal incitement constitutes no discrimination. The criminal nature of the prohibition prevents any shift of the burden of proof.¹¹² The Promotion of Employment Act prohibits employers from filing with the Employment

¹⁰⁴Draft Article 5.

¹⁰⁵Draft Article 6.

¹⁰⁶ Article 127 (2) Labour Code, binding employers to safeguard their employees' dignity during discharge of work duties, can be interpreted as a *sui generis* prohibition of harassment. However, this is limited both in substance and in scope from a Directives standpoint, and has no relation to the prohibition of discrimination. There is no definition of this obligation.

¹⁰⁷Draft Article 4 (2). Sexual harassment also constitutes discrimination under the draft.

¹⁰⁸Draft Article 7.

¹⁰⁹In addition, under the draft, racial segregation too is deemed to be a form of discrimination (Article 4 (2)). It is defined as the “issuing of an act, or commission of an action, or omission, which results in forced division, separation, or isolation of persons based on their race, ethnic appurtenance, or skin colour” (draft Article 11). The Minister of Education and local governments are bound to “take the necessary measures to prevent and terminate racial segregation in educational institutions” (draft Article 41 (2)).

¹¹⁰Draft Article 62 (1.8).

¹¹¹ Article 162 (1) Criminal Code, lacking enforcement.

¹¹²For more details, see “Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-

Agency job postings with requirements as to sex, age, national origin, ethnic appurtenance and health status.¹¹³ Breach of this prohibition is no discrimination under the law.¹¹⁴

Under both anti-discrimination bills, incitement to discrimination, defined as “direct and intentional encouragement, instructing, pressurising, or persuading, to commit discrimination, where the person inciting is capable of influencing [a person who is] an object of incitement,”¹¹⁵ encompasses instructions to discriminate within the Directives’ meaning, and is a form of discrimination.¹¹⁶

Existing law neither bans, nor defines instructions to discriminate within the Directives’ meaning, while both draft laws do.

Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector?

All fields under Article 3 of the Directive, both private and public sectors, are covered by the constitutional ban on racial/ethnic discrimination.¹¹⁷ All fields under Article 3, insofar as persons under 18 are concerned, are covered by the general ban on racial discrimination under the Child Protection Act.¹¹⁸

Article 3.1(a) ‘access to employment’, (c) ‘employment’, (d) ‘professional organisations’

International,¹¹⁹ and domestic law¹²⁰ cover both public and private sectors. However, domestic statutes do not cover self-employment and occupation (apart from the medical profession), professional organisations other than trade unions and employers’ organisations, and employment in the armed forces and police, and certain special agencies, governed by special laws. These excluded fields fall within the constitutional guarantee’s ambit.

While there is no general statutory ban on race discrimination specifically regarding organisations whose members carry on a profession, certain organisations whose members carry on particular trades are required to provide members equal access and equal status.¹²¹ This includes breeders’ associations,¹²² and trade chambers.¹²³

Article 3.1(b) ‘access to vocational training’

International,¹²⁴ and, domestic law albeit incompletely¹²⁵ cover both public and private sectors.

discrimination legislation in Bulgaria”, September 2001, European Roma Rights Center, Interights, Migration Policy Group. Discrimination itself is not criminalised, except for discriminatory obstruction of access to employment and discriminatory coercion resulting in withdrawal from employment (Article 172 (1) Criminal Code).

113Article 23.

114Prohibitions on radio and television broadcasts relating to ethnic/racial intolerance, and of discriminatory advertising, are not within the Directives’ meaning of instruction to discriminate either. See “Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria”, September 2001, European Roma Rights Center, Interights, Migration Policy Group.

115Draft Article 10.

116Draft Article 4 (2). The draft requires any teacher or trainer, or drafter of teaching books or materials to present all information in a manner aimed at abolishing negative stereotypes based on, *inter alia*, race, ethnicity, religion, and disability (Article 48 (3)).

117Article 6 (2) Constitution.

118Article 10 (2).

119Article 5 (e) i and 5 (e) ii International Convention on the Elimination of All Forms of Racial Discrimination; Articles 1-6, 18, 21-22, 24-25, 28-29 in conjunction with Article E European Social Charter Revised; Articles 6-8 in conjunction with Article 2.2 International Covenant on Economic, Social, and Cultural Rights; Article 22 in conjunction with Article 2.2 International Covenant on Civil and Political Rights; Article 1.3 in conjunction with Article 1.1 ILO Convention N 111.

120Article 8 (3) Labour Code; Article 7 (4) Civil Servant Act; Article 2 Promotion of Employment Act; Article 7 Professional Ethics Code regarding employment in the medical profession.

121While the law requires equal status without listing any grounds, implicitly, this amounts to a ban on race discrimination.

122Article 29 (1).8 Animal Breeding Act.

123Articles 9.1 and 29 (1).1 Trades Act.

124Article 5 (e) v International Convention on the Elimination of All Forms of Racial Discrimination; Articles 9 and 10 in conjunction with Article E European Social Charter Revised; Article 1 ILO Convention N 111.

125Article 2 Promotion of Employment Act; National Education Act in conjunction with Vocational Education and Training Act. The Vocational Education and Training Act, which does

Article 3.1 (e) ‘social protection’

International,¹²⁶ and, domestic law (partially)¹²⁷ cover both sectors.

Article 3.1 (f) ‘social advantages’

Only the Constitution covers this field, public and private sector alike.

Article 3.1 (g) ‘education’

International,¹²⁸ and domestic law (partially)¹²⁹ cover both sectors.

Article 3.1 (h) ‘goods and services’

The Constitution and international law cover both sectors.¹³⁰ Statutes requiring no-grounds consumer equality cover certain specific services, both sectors.¹³¹ Domestic law prohibits the broadcasting of discriminatory advertising.¹³²

The Prevention of Discrimination Bill generally bans race discrimination *erga omnes*, including in all fields under Article 3 Directive 2000/43. Further, it specifically bans race discrimination, including particular discriminatory conduct, in a number of fields, including employment and access to it,¹³³ access to vocational training and education,¹³⁴ professional organisations,¹³⁵ social protection,¹³⁶ social advantages,¹³⁷ and goods and services.¹³⁸

The Protection Against Discrimination Bill does not expressly define the scope of the ban on discrimination. It lacks any specific bans on concrete action constituting discrimination in any field.

The scope of existing bans on race discrimination is similar to that of Directive 2000/43. However, absent effective remedies, such scope is not operative. The Prevention of Discrimination Bill, envisaging adequate safeguards, has the potential to ensure enforceable protection in the exercise of

not prohibit discrimination, limits the subsidiary applicability of the National Education Act to vocational training in professional schools and professional secondary schools (Article 1 (3)). Accordingly, other vocational training institutions under the Vocational Education and Training Act are not covered by the prohibition of the National Education Act.

126 Article 5 (e) iv ICERD; Article 11-14 in conjunction with Article E ESCR; Article 9, 12 in conjunction with Article 2.2 ICESCR.

127 Article 3.3 Mandatory Social Security Code and Article 5.5 Health Security Act implicitly, both stipulating equality without stating any ground; Article 78 (2) Additional Voluntary Pension Security Act; Article 3 Social Assistance Act; Article 24 (1) and 61.1 National Framework Contract; Article 11 (1) Dentists' Professional Ethics Code.

128 Article 5 (e) v ICERD; Article 13 in conjunction with Article 2.2 ICESCR; Article 2 First Protocol in conjunction with Article 14 ECHR; Article 1.2 in conjunction with Article 1.1 Convention against Discrimination in Education (UNESCO).

129 Article 4 (2) National Education Act; Articles 4 and 22 (4) Higher Education Act; Article 2 (1) National Chitalishta Act; Article 3 Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools.

130 Article 5 (f) ICERD.

131 Articles 57 (1.6), 82, 83 (1.1) and (1.2), 90, 111 (2), and 113 (1.1) Telecommunications Act; Articles 21 (1), 53.1, and 66 (2.2) Postal Services Act; Articles 20 (2), 56 (3), 84 (1.5), 86 (1.3), 102.1, 129.4, and 130.3 Power Engineering and Power Efficiency Act. These activities, as well as banking services, are also covered by secondary provisions stipulating equality without stating grounds (Article 10.9 Ordinance N 2 of 16.03.1999 on Granting Individual Licenses for [...] Cable Telecommunications Networks for Distribution of Radio and Television Programmes; Article 9.9 Ordinance N 2 of 1.09.1999 on Granting an Individual License for [...] a System of Telephone Devices for Public Use; Article 7 (2) Ordinance on the Terms and Procedure for Access of Privileged Consumers and Independent Producers of Electric Energy to the Electric Transportation and Distribution Networks; Article 7 (2) Ordinance on the Terms and Procedure for Access of Privileged Consumers and Enterprises for Natural Gas Extraction to the Gas Transportation and/or Distribution Networks; Article 9 (5.4) Ordinance N 10 of 3.06.1993 on Internal Control in Banks).

132 Article 29 (2) in conjunction with Article 34.1 Consumers Protection and Rules of Commerce Act; Article 76 (2) Radio and Television Act.

133 Draft Articles 18 - 24, 29 - 30, and 34 - 35.

134 Draft Articles 23 and 38.

135 Draft Article 49.

136 Draft Article 46.5 and 46.6.

137 Draft Article 46.5.

138 Draft Article 50.

any right. The draft version of the Protection Against Discrimination Bill fails to expressly determine any scope.

Does the prohibition go beyond the scope foreseen in the Directive?

The constitutional ban covers, in addition to the Directive's scope, any other field, in both the public and private sectors. International law covers, beyond the Directive's scope, the exercise of human rights.¹³⁹

Beyond the Directive's scope, statutes cover criminal procedure,¹⁴⁰ tax procedure,¹⁴¹ non-professional military recruitment,¹⁴² sport contests,¹⁴³ the right to vote for a Great National Assembly,¹⁴⁴ and radio and television policy.¹⁴⁵ However, the significance of this is undermined by the lack of enforcement.

The Prevention of Discrimination Bill covers, in excess of the Directive, the exercise of any right in any field,¹⁴⁶ *erga omnes*.¹⁴⁷ Specific conduct is prohibited in fields beyond the Directive's scope, including access to commercial partnerships' shares,¹⁴⁸ publicly funded and public interest activities,¹⁴⁹ access to and use of public places and facilities,¹⁵⁰ advertising,¹⁵¹ compulsory military recruitment.¹⁵² The Protection Against Discrimination Bill does not expressly define a scope beyond that of Directive 2000/43.

Existing law theoretically covers a number of fields beyond Directive 2000/43, which lacks enforcement.

The Prevention Against Discrimination Bill expressly and specifically covers a number of fields beyond that scope, while the Protection Against Discrimination Bill fails to do so.

Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector?

The scope of the ban on **religious discrimination** is similar to that of racial discrimination, encompassing all fields under Directive 2000/43.¹⁵³ As an exception, international law does not ban religious discrimination in 'goods and services'. The general ban on religious discrimination under the Denominations Act covers all of the Directive's scope, in both the public and private sectors.¹⁵⁴

The express ban contained in the European Social Charter Revised¹⁵⁵ on **disability discrimination** covers employment and access to it (Article 3.1 (a) and (c)),¹⁵⁶ access to vocational training (Article 3.1 (b)),¹⁵⁷ and professional organisations (Article 3.1 (d)).¹⁵⁸ In addition, international bans implicitly

¹³⁹ Including rights guaranteed under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights, and the European Social Charter Revised.

¹⁴⁰Article 10 (1) Criminal Procedure Code.

¹⁴¹Article 9 (2) Tax Procedure Code.

¹⁴²Article 97 (1) Defense and Armed Forces of the Republic of Bulgaria Act.

¹⁴³Article 41 (1.5) Physical Training and Sports Act.

¹⁴⁴Article 3 Electing a Great National Assembly Act.

¹⁴⁵Article 6 (3.3) Radio and Television Act.

¹⁴⁶Draft Article 13 (1).

¹⁴⁷Draft Article 13 (2).

¹⁴⁸Draft Article 46.1.

¹⁴⁹Draft Article 46.2.

¹⁵⁰Draft Article 46.3.

¹⁵¹Draft Article 47, banning commission, creation, and any manner of distribution of advertising, which discriminates or incites to discrimination on grounds of, *inter alia*, race/ethnicity

¹⁵²Draft Article 53.

¹⁵³See above previous section.

¹⁵⁴Articles 3 (1) and 4 (4).

¹⁵⁵Article E, banning discrimination on grounds of "health status."

¹⁵⁶Articles 1 – 4, 6, 18, 21-22, 24-25, and 28-29 in conjunction with Article E.

¹⁵⁷Articles 9 - 10 in conjunction with Article E.

¹⁵⁸Article 5 in conjunction with Article E.

cover employment and access to it,¹⁵⁹ and professional organisations.¹⁶⁰ The general ban on disability discrimination under the Protection, Rehabilitation and Social Integration of Invalids Act covers any field, including the scope of Directive 2000/78.¹⁶¹ Statutes governing certain,¹⁶² but not all,¹⁶³ fields under the Directive, ban disability discrimination expressly or implicitly.

There is no express general ban on **age or sexual orientation discrimination**.¹⁶⁴ International law covers employment and access to it (Article 3.1 (a) and (c)),¹⁶⁵ access to vocational training (Article 3.1 (b)),¹⁶⁶ and professional organisations (Article 3.1 (d)).¹⁶⁷ Domestic age discrimination¹⁶⁸ cover, partially, access to employment and vocational training, and employment (Article 3.1 (a), (b), (c)),¹⁶⁹ excluding civil servants, civil aviation personnel, the armed forces and the police, and certain other enforcement personnel.¹⁷⁰ Absent a constitutional age discrimination ban, the fields lacking statutory coverage are unprotected.¹⁷¹ The single existing express ban on sexual orientation discrimination¹⁷² only partially covers access to vocational training (Article 3.1 (b)), while employment and access to it, as well as professional organisations are unprotected.¹⁷³

The Prevention of Discrimination Bill bans uniformly discrimination on all grounds covered under Directive 2000/78 *erga omnes* in all that Directive's scope. It also bans particular discriminatory conduct on those grounds in employment and access to it (Article 3.1 (a) and (c)),¹⁷⁴ access to vocational training and education (Article 3.1 (b) and (g)),¹⁷⁵ professional organisations (Article 3.1 (d)).¹⁷⁶ The Protection Against Discrimination Bill provides for no express scope.

Existing law does not correspond to Directive 2000/78 in terms of scope. The Prevention of Discrimination Bill does, while its Parliamentary version may be argued to do so only implicitly.

Does the prohibition go beyond the scope foreseen in the Directive?

The general bans on **religious discrimination** under the Constitution and the Denominations Act cover, beyond the Directive's scope, any field, both private and public sectors. International and

¹⁵⁹Articles 6 and 7 in conjunction with Article 2.2 ICESCR.

¹⁶⁰Article 8 in conjunction with Article 2.2 ICESCR, Article 22 in conjunction with Article 2.2 ICCPR.

¹⁶¹In contrast to racial and religious discrimination, disability discrimination is not banned by the Constitution.

¹⁶²Including the Labour Code, the Promotion of Employment Act, the Additional Voluntary Pension Security Act, the Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools.

¹⁶³Including under the Higher Education Act, the National Education Act, and the Civil Servant Act. Indeed, some special laws, including those governing employment in civil aviation, the army, police and certain other law-enforcement agencies, contain directly discriminatory provisions on grounds of disability. No official plans appear to exist yet regarding the possibility provided for under Article 3.4 of Directive 2000/78.

¹⁶⁴The Constitution does not ban age discrimination.

¹⁶⁵Articles 1 – 4, 6, 18, 21-22, 24-25, and 28-29 in conjunction with Article E ESCR, Articles 6 and 7 in conjunction with Article 2.2 ICESCR.

¹⁶⁶Articles 9 and 10 in conjunction with Article E ESCR.

¹⁶⁷Article 5 in conjunction with Article E ESCR, Article 8 in conjunction with Article 2.2 ICESCR, Article 22 in conjunction with Article 2.2 ICCPR.

¹⁶⁸Article 8 (3) Labour Code; Article 2 Promotion of Employment Act; Article 7 Professional Ethics Code (medical profession).

¹⁶⁹Article 2 Promotion of Employment Act; Articles 4 and 22.4 Higher Education Act; Article 3 Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools, expressly banning age discrimination. However, other laws governing sectors in this field, including the Vocational Education and Training Act and the National Education Act, do not prohibit age discrimination.

¹⁷⁰The Civil Servant Act, the Defense and Armed Forces Act, and the Ministry of Interior Act do not prohibit any discrimination. Indeed, certain provisions directly discriminate on grounds of age (Articles 193 (1) and Article 253 (1.1) Ministry of Interior Act providing for age requirements for admission to service, and for dismissal of servants upon reaching a set age, as well as Articles 116 (1.3) and 127 (1) Defense and Armed Forces Act providing for maximum age requirements for admission to army service, and, under Article 128, dismissal upon reaching such age. Maximum age requirements also exist under secondary legislation governing civil aviation personnel).

¹⁷¹The Constitution and the Civil Servant Act, both banning discrimination on grounds of personal status, may be argued to implicitly protect age within "personal status" (undefined), applicable to any field, including the scope of Directive 2000/78. Under the Civil Servant Act, such protection would cover civil service employment within the field under Article 3.1 (a) and (c). However, the feasibility of such argument is uncertain.

¹⁷²Article 2 Promotion of Employment Act. Implicitly, Article 3 Ordinance on State Requirements Concerning Acknowledgment of Higher Education Obtained and Periods of Education Completed in Foreign High Schools too prohibits sexual orientation discrimination.

¹⁷³An all-encompassing ban on sexual orientation discrimination may theoretically be inferred from constitutional and statutory prohibitions of discrimination on grounds of "personal status."

¹⁷⁴Draft Articles 18 - 24, 29 – 30, and 34 – 35.

¹⁷⁵Draft Articles 23 and 38.

¹⁷⁶Draft Article 49.

domestic religious discrimination bans have the same scope beyond the Directive as those on racial discrimination.¹⁷⁷

Beyond the scope of the Directive, express international **disability discrimination** bans cover the exercise of social rights,¹⁷⁸ including social protection,¹⁷⁹ while implicit bans cover social protection,¹⁸⁰ education,¹⁸¹ as well as civil, political and economic rights.¹⁸² International bans do not cover social advantages or goods and services. Domestic no-grounds equality clauses implicitly cover certain specific services.¹⁸³

The ban on disability discrimination under the Protection, Rehabilitation and Social Integration of Invalids Act applies to any field beyond the Directive's scope. Equality clauses implicitly cover social security,¹⁸⁴ health care,¹⁸⁵ telecommunications and postal services,¹⁸⁶ and power provision.¹⁸⁷ The Additional Voluntary Pension Security Act prohibits employers from denying security to employees on grounds of health status.¹⁸⁸ The Dentists' Professional Ethics Code prohibits dentists from denying services on grounds of health status.¹⁸⁹

No express international ban on **age or sexual orientation discrimination** exceeds the scope of the Directive. Implicit international bans cover social protection,¹⁹⁰ education,¹⁹¹ and the exercise of human rights.¹⁹² The Additional Voluntary Pension Security Act prohibits employers from denying employees security on grounds of age.¹⁹³ The Social Assistance Act prohibits age discrimination in social assistance.¹⁹⁴ The single existing express ban on sexual orientation discrimination covers no field beyond the scope of the Directive.¹⁹⁵ Implicitly, equality clauses cover, beyond this scope, social security,¹⁹⁶ health care,¹⁹⁷ and the provision of telecommunications,¹⁹⁸ power,¹⁹⁹ and postal services.²⁰⁰

Any additional scope of the bans is rendered theoretical due to the lack of enforcement.

The Prevention of Discrimination Bill, prohibiting discrimination *erga omnes* on all grounds under Directive 2000/78 applies to any field beyond the Directive's scope.²⁰¹ Further, it specifically bans discrimination in fields beyond the Directive's scope, including social protection,²⁰² social advantages,²⁰³ goods and services,²⁰⁴ access to commercial partnerships' shares,²⁰⁵ publicly funded and

¹⁷⁷See section on racial discrimination. One exception concerns rights to inheritance and to state protection against violence guaranteed without discrimination under ICERD, which is not applicable to religion.

¹⁷⁸Including rights guaranteed under ESCR, ICESCR, and ICCPR.

¹⁷⁹Articles 11-14 in conjunction with Article E ESCR.

¹⁸⁰Article 9 and 12 in conjunction with Article 2.2 ICESCR.

¹⁸¹Article 13 in conjunction with Article 2.2 ICESCR, Article 2 First Protocol in conjunction with Article 14 ECHR.

¹⁸²Including rights protected under ICCPR, ICESCR and ECHR.

¹⁸³Under, *inter alia*, the Telecommunications Act, the Postal Services Act, the Power and Power Efficiency Act.

¹⁸⁴Article 3.3 Mandatory Social Security Code.

¹⁸⁵Article 5.5 Health Security Act.

¹⁸⁶Articles 57 (1.6), 82, 83 (1.1) and (1.2), 90, 111 (2), and 113 (1.1) Telecommunications Act. Articles 21 (1), 53.1, and 66 (2.2) Postal Services Act.

¹⁸⁷Articles 20 (2), 56 (3), 84 (1.5), 86 (1.3), 102.1, 129.4, and 130.3 Power Engineering and Power Efficiency Act.

¹⁸⁸Article 78 (2).

¹⁸⁹Article 11 (2).

¹⁹⁰Article 11-14 in conjunction with Article E ESCR, Articles 9 and 12 in conjunction with Article 2.2 ICESCR.

¹⁹¹Article 13 in conjunction with Article 2.2 ICESCR, Article 2 First Protocol in conjunction with Article 14 ECHR.

¹⁹²Including rights safeguarded by ICCPR, ICESCR, ECHR and ESCR.

¹⁹³Article 78 (2).

¹⁹⁴Article 3.

¹⁹⁵Excluding the theoretical possibility of inferring generally applicable constitutional protection from the constitutional ban on "personal status" discrimination.

¹⁹⁶Article 3.3 Mandatory Social Security Code.

¹⁹⁷Article 5.5 Health Security Act.

¹⁹⁸Articles 57 (1.6), 82, 83 (1.1) and (1.2), 90, 111 (2), and 113 (1.1) Telecommunications Act.

¹⁹⁹Articles 20 (2), 56 (3), 84 (1.5), 86 (1.3), 102.1, 129.4, and 130.3 Power Engineering and Power Efficiency Act.

²⁰⁰Articles 21 (1), 53.1, and 66 (2.2) Postal Services Act.

²⁰¹Draft Article 13.

²⁰²Draft Article 46.5 and 46.6.

²⁰³Draft Article 46.5.

²⁰⁴Draft Article 50.

public interest activities,²⁰⁶ access to and use of public places and facilities,²⁰⁷ advertising,²⁰⁸ and compulsory military recruitment (for religion/belief and sexual orientation only).²⁰⁹ The Protection Against Discrimination bill does not expressly stipulate any scope within, or beyond that of Directive 2000/78.

While existing bans on religious and disability discrimination, and on age and sexual orientation discrimination, exceed the scope of Directive 2000/78, enforcement is lacking. The Prevention of Discrimination draft exceeds the scope of the Directive, guaranteeing enforceability. The Protection Against Discrimination Bill lacks any express scope.

Do such exemptions (occupational requirements) exist on the national level? Does national law define ‘genuine and determining occupational requirements’ and, if so, how? Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?

The Labour Code and the Promotion of Employment Act exempt “differences or preferences based on the qualification requirements for carrying out a particular work,” and “special protection of certain workers and employees (minors, pregnant women and mothers of young children, invalids, reassigned persons, etc.), which is envisaged by legislation.”²¹⁰ The Labour Code exemption applies to race, age, religion/belief, and “invalidity,” while the Promotion of Employment Act exemption - to sexual orientation, race, age, religious beliefs, and mental and physical disabilities. The Promotion of Employment Act exempts age and health requirements by employers where “due to the nature of a job age or health represent a substantive element of it.”²¹¹ The Protection, Rehabilitation and Social Integration of Invalids Act exempts “differences or preferences based on the qualification requirements for carrying out a particular work, as well as measures aimed at special protection of invalids.”²¹² The exemptions lack any justification test. Thus, any qualification requirement (not necessitated by the nature or context of a job, neither genuine/determining, nor pursuing any legitimate objective/ proportionate) will overrule the discrimination ban. Special protective measures²¹³ need no justification, apart from (only under the Labour Code) having to be envisaged by legislation, including any rules adopted by the executive.

The Higher Education Act exempts differences based on age, race/ethnicity, and religion “in accordance with the particularities of the training and the future profession,” stipulated under the internal regulations of universities.²¹⁴ Accordingly, any university may overrule the ban on discrimination without justification other than “accordance with the particularities of the training and future profession.” There are no exemptions for religion/belief organisations within the meaning of Directive 2000/78.

The existing exemptions are neither defined, nor implemented.

The Prevention of Discrimination Bill, in correspondence with the Directives, exempts “different treatment of persons on grounds of a characteristic related to the grounds [...], where due to the nature of a particular occupation or activity, or the conditions in which these are carried out, such

205Draft Article 46.1.

206Draft Article 46.2.

207Draft Article 46.3.

208Draft Article 47.

209Draft Article 53.

210§ 1.7 Labour Code and § 1.20 Promotion of Employment Act. Under the Promotion of Employment Act the requirement for legislative provision is absent.

211Article 23.

212Article 5a (3). Raising an issue, the exemptions under the Labour Code, the Promotion of Employment Act, and the Protection, Rehabilitation, and Social Integration of Invalids Act form part of definitions of indirect discrimination. The relevance of such exemptions to indirect discrimination is beyond this analysis. Based on the language, they potentially apply implicitly to direct discrimination.

213Those are based on certain employees' perceived vulnerability (persons under age 18, pregnant women, the disabled) and include prohibitions on nighttime labour, work in noxious conditions, hard work, etc.

214Article 4.

characteristic is a substantive and determining occupational requirement, the aim is lawful and the requirement does not exceed what is necessary to achieve it;²¹⁵ different treatment on grounds of religion or belief “[...] regarding an occupation carried out in religious institutions or organisations, where due to the nature of such occupation, or the conditions it is carried out in, religion or belief [...] is a substantive and determining occupational requirement with regard to the nature of the institution or organisation, where the aim is lawful and the requirement does not exceed what is necessary to achieve it;”²¹⁶ different treatment on grounds of religion/belief “[...] in religious education or training, including training or education for purposes of carrying out an occupation [within a religious organisation];”²¹⁷ “different treatment of disabled persons in carrying out training or education to meet specific educational needs aimed at equalising their opportunities.”²¹⁸

Without requiring justification, contrary to the Directives, this bill exempts: special protection of pregnant women and mothers established by law;²¹⁹ special protection of children without parents, minors, single parents and disabled persons established by law;²²⁰ [positive] measures on grounds of disability and age under the Promotion of Employment Act.²²¹

It exempts positive measures on all grounds under the Directives benefiting persons or groups in unequal positions aimed at equalising their opportunities, insofar as and as long as such measures are necessary.²²² It permits measures to ensure participation by persons belonging to ethnic minorities in education and training insofar as and as long as necessary.²²³ The Protection Against Discrimination Bill reproduces literally the Prevention of Discrimination Bill exemptions.

Existing law does not envisage exemptions corresponding to the Directives. The existing exemptions diverge from EU law, and lack definitions, or enforcement. Exemptions under both pending anti-discrimination bills comply with the Directives, except for certain lacking justification requirements.

Are there specific national law provisions regulating the use of preemployment medical examinations? If so, what are the main provisions?

No generally applicable law requires pre-employment medical examinations. However, there are requirements adopted by the executive.²²⁴ Ordinance N3 of 28.02.1987 on Mandatory Preliminary and Periodical Medical Examinations of Employees requires all first-time prospective employees to undergo pre-employment medical examinations²²⁵ to determine their capability, with reference to health and to work.²²⁶ Determination is governed by a List of Medical Prohibitions on Employment in Industries and Professions with Harmful Working Conditions and Factors,²²⁷ an Addendum N4 to the Ordinance, prohibiting access to particular work for people with particular illnesses.²²⁸ Decisions are subject to administrative review only.²²⁹

What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a ‘reasonable accommodation’?

215Draft Article 12 (1.2). The draft requires the Minister of Labour in coordination with the Minister of Interior to adopt a list of occupational activities for which sex is a determining requirement, to be reviewed at least once every three years (draft Article 12 (2)). An equivalent list regarding the armed forces is to be adopted by the Minister of Defense (draft Article 36).

216Draft Article 12 (1.3).

217Draft Article 12 (1.4).

218Draft Article 12 (1.5).

219Draft Article 12 (1.11).

220Draft Article 12 (1.12).

221Draft Article 12 (1.13). For details, see section on Positive measures below.

222Draft Article 12 (3).

223Draft Article 12 (5).

224 Lacking primary law (adopted by Parliament) authorisation, executive rules on pre-employment examinations are formally unlawful.

225As well as those who have not been employed for more than 3 months, and those to be employed in harmful work involving risk of professional disabilities (Article 2(1)).

226Article 1.

227Article 5 (2).

228Also, § 1 and § 3 Additional Provisions.

229Article 6 (1).

There is no provision on the correlation between the outdated Ordinance N3 of 28.02.1987, and the existing abstract non-discrimination guarantees. There is no duty under existing law to provide a reasonable accommodation within the Directive's meaning.²³⁰ Ordinance N3's pre-employment medical certification requirements take no account of individual circumstances, or potential reasonable accommodation. Pre-employment medical certification is a formal, absolute ban on access to certain work based on an individual's particular disability/illness. This fact is deemed in law as incapacity to do a particular, or any work. The law fixes ratios between particular disabilities/illnesses and functional deficit percentages.²³¹ No evaluation is made of an individual's functional abilities to do a particular work in particular circumstances, or of potential accommodation. Absolute medical prohibitions on access to work by people with particular disabilities, enforceable by administrative penalties, effectively ban accommodation even where employers would opt to provide it.

Existing pre-employment medical examination requirements conflict with non-discrimination and the duty to provide reasonable accommodation under Directive 2000/78.

Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

The Protection of Personal Data Act permits personal health information to be obtained or processed without the affected person's consent, where this is required by law, or necessary to protect such person's, or another's, life or health.²³² Accordingly, an employer is authorised to obtain information about disabilities from a prospective employee, insofar as required by law,²³³ or if this is needed to protect human life or health.

No statute requires employers to obtain health information about prospective employees. However, under regulations stipulating the necessary documents for entry into employment, an employer is required to obtain, hence, permitted to require, while a prospective employee is required to present, for purposes of concluding a contract, a pre-employment medical certificate.²³⁴ A pre-employment medical certificate is a statement by a medical professional that a person is capable of working, i.e. has no disability (illness) precluding her/him under Ordinance N3 of 28.02.1987²³⁵ from doing a job. Pre-employment medical certification rules under Ordinance N3 of 28.02.1987 are outdated and incompatible with Directive 2000/78. Certification, as a rule, is not job specific. Exceptionally, it takes account of particular high-risk jobs' specificity, for instance, in aviation, where special legislation imposes higher health requirements for prospective employees. The generally applicable legislation does not stipulate the type, or scope of medical information to be contained in a medical certificate. Special provisions on high-risk work stipulating stricter medical requirements for employees may detail the requisite extent of medical certification.

²³⁰Considering, insofar as relevant, reassignment, which is not designed to ensure non-discrimination (see below section on Reasonable Accommodation), it does not correlate to the Ordinance.

²³¹See Ordinance on the Evaluation of Invalidity.

²³²Article 21 (1) and (2.1) and (2.2).

²³³The existing requirements on employers to obtain such information are not law, but secondary legislation (adopted by the executive, as opposed to Parliament). Unfettered discretion to adopt such secondary requirements being authorised by law, whether such requirements are implicitly part of the authorising law is an issue for the courts. Even assuming they are not, they constitute no justification for requiring personal health information under the Act, such information could still fall within the category of data necessary to protect a person's life or health, or those of another, and be justifiably required under the Act. The Act being recent, no case law yet exists to help clarify these issues.

²³⁴Article 1.4 Ordinance N 4 of 11.05.1993 on Documents Necessary to Conclude a Labour Contract, and Article 2 (2.4) Ordinance N 1 of 21.03.2000 on Documents for Entering into Civil Service. Both ordinances are based on statutory provisions granting the executive unfettered discretion to determine the documents necessary to enter into employment (Article 62 (2) Labour Code and Article 8 (2) Civil Servant Act). In addition, an employer may require other documents in addition to those specified under the legislation if expressly or implicitly authorised under any other legislation (Article 2 Ordinance N 4 of 11.05.1993). In the case of civil servants, employers may require additional documents where a particular job so mandates (Article 2 (6) Ordinance N 1 of 21.03.2000).

²³⁵Article 5 (2).

There is no provision on the stage at which an employer is authorised to demand the requisite medical certificate.²³⁶ There is no express provision on the consequences of an employee refusing to present a pre-employment medical certificate. An employee is required to present one insofar as s/he wishes to enter into employment. Where s/he refuses to present it, an employer may lawfully refuse to contract her/him. An employee is subject to no other sanction. An employer who contracts an employee without obtaining a medical certificate breaches the law, subject to administrative sanction.

Under the Prevention of Discrimination Bill, an employer is prohibited from demanding, prior to contracting an employee, any information concerning any ground covered by the Directives, except in cases of exemptions under the bill, or where such information is needed to obtain a permission to manipulate classified information under the Protection of Classified Information Act.²³⁷ The Protection Against Discrimination Bill provides nothing on the subject.

In conclusion, existing law permits, and indeed, requires employers to obtain health certificates from prospective employees. Insofar as employees wish to be contracted, they are required to provide a certificate. Where they fail to, employers may legitimately refuse to contract them. The law specifies neither the type, nor the extent of the requisite health information, nor the stage at which it is due.

Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

There is no duty to provide reasonable accommodation within the Directive's meaning.

Under the Healthy and Safe Working Conditions Act, employers have a duty to provide for “facilities” for disabled persons to carry out their work.²³⁸ Neither this duty, nor its correlation to reassignment (see below) is defined. There is no provision on its scope, or whether it applies to job applicants. Its breach constitutes no discrimination. There is no mechanism to enforce it. It is not implemented in practice.

The Protection, Rehabilitation, and Social Integration of Invalids Act in conjunction with the Labour Code and the Civil Servant Act entitle disabled people to “reassignment.”²³⁹ Reassignment is the right of an employee rendered, by an illness or an occupational accident, unable to carry out the assigned work, but able, with no risk to her/his health, to carry out other appropriate work, or the same work under alleviated working conditions, to be reassigned to such other work, or to the same work under alleviated conditions, upon prescription by a health authority.²⁴⁰ The right is conditional upon a prescription, without which, no disabled person is entitled to it, regardless of their actual condition. A prescription determines the appropriate work or working conditions.²⁴¹ Under the Ordinance on Reassignment, it designates a particular job of reassignment.²⁴² In practice, however, it rarely does, stating, instead, the prohibited work or working conditions.²⁴³ A reassignment prescription is binding on both employer and employee, forbidding the latter to carry out the prohibited work, and the former to allow this.²⁴⁴ Failure to execute a prescription for reassignment constitutes no discrimination, there

²³⁶It may be inferred from the purpose of presenting a certificate (in order to conclude a contract) that such certificate is required immediately prior to concluding a contract, at the final stage of an application procedure. However, no rule prevents employers from requiring one at an earlier stage.

²³⁷Draft Article 20 (2).

²³⁸Article 16 (1.4).

²³⁹Article 19 (2) Protection, Rehabilitation, and Social Integration of Invalids Act. The Act entitles disabled persons to work in an integrated environment (Article 19 (1)). It does not define this right, nor envisage any corresponding duty. No enforcement mechanism is available, rendering the right declaratory. Under the Act, employers are not under a duty to provide reasonable accommodation, but instead entitled to financial stimuli where they opt to do so (Article 19 (3)).

²⁴⁰Article 314 Labour Code.

²⁴¹Article 317 (1) Labour Code.

²⁴²Article 1 (4).

²⁴³Under the Ordinance on the Evaluation of Invalidity, any evaluation of disability includes a determination of prohibited working conditions (Article 91.6).

²⁴⁴Article 317 (2) Labour Code.

being no correlation in law between reassignment and the ban on discrimination. It is a breach of law subject to administrative sanction only. Additionally, an employer is liable to the employee for monetary compensation for each day after expiry of the time limit for execution of a prescription. The right to reassignment is conditional on the availability of appropriate work. Where there is no such work,²⁴⁵ there is no duty on an employer to provide it. Instead, the employee is subject to dismissal.²⁴⁶ While employers with more than 50 employees are required by law to create jobs for reassignment, no provision ensures the availability of jobs for reassignment in enterprises with less than 50 employees. Thus, disabled employees of the latter category are denied reassignment, unless appropriate jobs happen to be available.

Reassignment's applicability to job applicants is limited. The Labour Code limits the scope of reassignment to employees. The Ordinance on Reassignment extends it to job applicants.²⁴⁷ The Promotion of Employment Act limits job applicant beneficiaries to long-term disabled persons registered with the Employment Agency. An employer who refuses to hire a long-term disabled person is liable only if such person was referred by the Employment Agency.²⁴⁸ Independent job seekers, and registered short-term disabled persons are not entitled to reassignment in access to employment, even where they have a reassignment prescription. Furthermore, even long-term disabled persons referred by the Employment Agency have limited entitlement to reassignment, an employer being authorised to refuse them where s/he has completed the required fixed percentage of jobs for disabled persons.²⁴⁹

In conclusion, reassignment, which is not aimed at compensating for disability in order to make it possible for a disabled person to work, but instead, takes disability as a point of reference, assigns disabled persons to work which is compatible with their disability, banning their access to any other work, is not reasonable accommodation within the Directive's meaning.

Under the Prevention of Discrimination Bill, in compliance with the Directive, an employer is under a duty to “accommodate a disabled person's needs upon employment, or during employment, where disability occurs during employment, unless the cost is unjustifiably high and would put the employer in serious difficulty.”²⁵⁰ This duty applies to job applicants, as well as to employees. Where accommodation is unreasonable, an employer is under a duty to provide reassignment.²⁵¹ The Draft requires educational institutions to take “appropriate measures compensating for disabilities,” for disabled persons to effectively exercise their educational rights on an equal basis, unless the cost is unjustifiably high and presents serious difficulty.²⁵² Failure to provide reasonable accommodation in employment and education is no discrimination, but is a breach of anti-discrimination law, and incurs liability.²⁵³ The Protection Against Discrimination Bill provides for no duty to provide reasonable accommodation.

Existing law does not provide for a duty to provide reasonable accommodation within the meaning of Directive 2000/78, nor does the Protection Against Discrimination Bill. The Prevention of Discrimination Bill provides for reasonable accommodation.

Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?

²⁴⁵“Appropriate work” is only defined under the Promotion of Employment Act as “[...] compatible with a person's education, qualification, health status, age, and sex, where these are a condition for carrying out such work [...]” (Additional Provision § 1.4). Legal doctrine defines “appropriate work” for purposes of the Labour Code as “a vacant job compatible with a person's altered health status” (see Vassil Mruchkov, Krassimira Sredkova, Atanas Vassilev, “Commentary to the Labour Code,” SIBI, 1996, p. 573).

²⁴⁶Article 325.9 Labour Code.

²⁴⁷Article 6.

²⁴⁸Article 80 Promotion of Employment Act.

²⁴⁹Article 80 in conjunction with Additional Provision § 1.27 Promotion of Employment Act.

²⁵⁰Draft Article 25 (1).

²⁵¹Draft Article 25 (2).

²⁵²Draft Article 39.

²⁵³What does constitute discrimination is building or maintaining an architectural environment obstructing disabled persons' access to public places (draft Article 4 (3)).

There is no duty for reasonable accommodation within the Directive's meaning with respect to disability, or any other ground. While this requirement does not constitute accommodation within the meaning of the Directive, non-Orthodox employees are entitled, for purposes of religious celebrations, to days off work at the expense of their statutory paid, or unpaid leave.²⁵⁴ The number of such days may not exceed the number of official Eastern Orthodox celebrations.²⁵⁵ This is exclusively granted to certain believers, and for certain holidays, both selected yearly at the discretion of the government.²⁵⁶ While it is no accommodation requirement within the meaning of the Directive, employees under 18 are entitled to "particular care," employers being required to provide them with alleviated working conditions, and vocational training and advanced vocational training opportunities.²⁵⁷ Shorter working hours and longer paid annual leave are guaranteed.²⁵⁸

Under the Prevention of Discrimination Bill, employers are under a duty to provide working hours and rest days as required by an employee's religion/faith.²⁵⁹ Such duty is limited to cases where no excessive difficulty for the production process would result and where any negative impact on such process can be compensated for.²⁶⁰ There are no such provisions under the Protection Against Discrimination Bill.

There is no duty under existing law for reasonable accommodation with respect to other grounds.

How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?

In the absence of a duty for reasonable accommodation, there is only reassignment to consider, with respect to which no 'reasonable' test is there in law for courts to apply. Reassignment is a matter for health authorities to decide, their prescription being binding *erga omnes*, including on the courts.²⁶¹ Where, prior to its entry into force, an employer or employee challenge a prescription for "reassignment," judicial review is limited to formal lawfulness. It is courts' consistent practice when reviewing health authorities' decisions on "limited working ability" (disability), including prescriptions for reassignment, to deny any review on the substance, on grounds of the medical nature of such decisions.

When is differentiation on grounds of age 'objectively and reasonably' justified under national law? How is this test being applied?

No justification is required in law for age differentiation. Exemptions from statutory age discrimination bans require no justification.²⁶² In the absence of a constitutional age discrimination ban, legislative discretion to differentiate on grounds of age is unfettered.

The Prevention of Discrimination Bill, contrary to Directive 2000/78, requires no justification for exemptions for minimum age, professional experience or length of service for access to employment or to certain advantages linked to employment;²⁶³ maximum age requirements for recruitment based on training needs for the post in question or the need for a reasonable period of employment before retirement;²⁶⁴ requirements for minimum and maximum age for access to training and education where

²⁵⁴Article 173 (2) Labour Code; Article 57 (2) Civil Servant Act.

²⁵⁵Ibid.

²⁵⁶For 2002, these include Catholics, Muslims, Jews, the Armenian Apostolic Orthodox Church, the White Brotherhood community, the Churches of Adventists of the Seventh Day, the Union of Evangelical Congregational Churches, and the Baha'i Community (Decision N851 of the Council of Ministers of 21.12.2001 [...]).

²⁵⁷Article 305 (1) Labour Code. Other "special protection" provisions prohibit employing minors for hard, noxious or dangerous work and similar (Articles 301-304 Labour Code).

²⁵⁸Article 305 (3) and (4) Labour Code.

²⁵⁹Draft Article 21 (2).

²⁶⁰Ibid.

²⁶¹Article 17 Mandatory Social Security Code.

²⁶²See above, section on Genuine and Determining Occupational Requirements.

²⁶³Draft Article 12 (1.6).

²⁶⁴Draft Article 12 (1.7).

this is objectively necessary due to the nature of the training or education, or the conditions it is carried out in;²⁶⁵ requirements for age and length of service for purposes of social security;²⁶⁶ and positive measures on grounds of age under the Promotion of Employment Act.²⁶⁷ The Protection Against Discrimination Bill reproduces those provisions.

Neither existing, nor draft law requires justification for age differentiation.

Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Article 6.2 Employment Directive)

There is no special arrangement. As far as there are occupational social security schemes, the applicable Additional Voluntary Social Security Act banning employers from denying employees social security on grounds of age is not age-specific, protecting a number of grounds. Age discrimination in state social security is implicitly prohibited by an equality clause.²⁶⁸

Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow fixing of retirement ages by individual or collective labour agreements and, if so, what are the conditions? Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age? Are mandatory retirement ages (widely imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?

The Mandatory Social Security Code, the Additional Voluntary Social Security Act, and the Ordinance on Labour Categorisation upon Retirement govern social security. Retirement is not compulsory. It is a legal right to receive social security payments exercisable at the discretion of its holder, and not an obligation. Exercise of that right entails no ban on further remunerated employment. No compulsory retirement is permitted. An employer is authorised to dismiss an employee who has become entitled to retire,²⁶⁹ but the employee is not prevented in law from seeking or obtaining other employment. Rights to protection from dismissal on grounds other than those permitted are not lost. No representative data is available on the extent to which it is a practice to dismiss employees entitled to retire.

Reaching a certain age is not sufficient in itself, becoming entitled to retire is conditional upon reaching a certain age combined with a specified length of service.²⁷⁰ Based on the length of service, individual retirement ages may differ. Regardless of the length of service, a minimum retirement age is fixed prior to which one may not retire.²⁷¹ For women, the minimum retirement age is 55 years and 6 months. One is entitled to retire upon reaching this age, if the sum total of age and length of service is at least 88 years.²⁷² For men, the minimum retirement age is 60 years and 6 months, and the requisite sum total of age and years of service, 98.²⁷³ Starting from 31 December 2000, those ages are subject to annual increases by 6 months for both women and men, until a minimum retirement age of 60 and 63 is reached for women and men respectively.²⁷⁴ The sum totals of age and years of service for both sexes are subject to annual increases by 1, until they reach 90 for women, and 100 for men.²⁷⁵ Accordingly, as per 2003, the retirement age for women is 57 years, provided that the sum total of

²⁶⁵Draft Article 12 (1.8).

²⁶⁶Draft Article 12 (1.9).

²⁶⁷Draft Article 12 (1.13). For details on these measures, see section on Positive Measures below.

²⁶⁸Article 3.3 Mandatory Social Security Code.

²⁶⁹Article 328.10 Labour Code, Article 106 (1.5) Civil Servant Act. An employer retains the right to dismiss an employee who has become entitled to retire at any time.

²⁷⁰Article 68 (1) Mandatory Social Security Code. Incidentally, the particular combinations fixed for women and men differ (ibid.).

²⁷¹Ibid.

²⁷²Ibid.

²⁷³Ibid.

²⁷⁴Article 68 (2) Mandatory Social Security Code.

²⁷⁵Ibid.

such age and length of service is at least 90. For men, the retirement age for 2003 is 62 years, provided that the sum total of such age and the length of service is at least 100. Starting from 31 December 2004, the sum total of 90 for age and length of service for women is subject to annual increases by 1 until it reaches 94.²⁷⁶ Where, upon reaching these respective ages, a person's sum total of age and length of service is less than the requisite amount, such person regardless of sex becomes entitled to retire upon reaching 65 years of age and 15 years of service, of which 12 years actual service.²⁷⁷ Provisions fixing retirement ages under the Mandatory Social Security Code are imperative, excluding any possibility for any party to derogate from them.²⁷⁸ No collective or other agreements, or employers can fix retirement ages.

Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc.)?

The Mandatory Social Security Code provides for early retirement for persons employed in first and second category labour.²⁷⁹ First category labourers are entitled to retire 8 years before the general retirement age if they have at least 10 years of service.²⁸⁰ For second category, the age required is 3 years less the general retirement age and at least 15 years of service.²⁸¹ Entitlement to early retirement payments is terminated upon acquiring an entitlement to general retirement.²⁸² Professional army servants, Ministry of Interior servants and certain other categories of enforcement personnel are entitled, upon being dismissed, to retire regardless of their age, if their years of service are 25, of which at least two thirds actual service.²⁸³

The early retirement scheme for first and second category labourers apparently aims at allowing employees doing hard and/or harmful work to leave it earlier in life to avoid (further) damage to health. Insofar as this aim is legitimate, the scheme may be justifiable under the Directive. Lesser retirement age requirements for army and police, and other enforcement personnel in cases of dismissal do not appear justifiable by a legitimate aim under Directive 2000/78.

Is selection for redundancy widely decided on age grounds? Is there obvious evidence of age discrimination in access to training opportunities?

National law exhaustively lists the permissible criteria for selection for redundancy, and age is not one.²⁸⁴ Any selection for redundancy based on age is unlawful. No reliable data is available on such unlawful practices, which may exist. There is anecdotal evidence of discrimination against older employees in access to vocational training. No reliable data confirms this, or estimates the nature and extent of such practices.

²⁷⁶Article 68 (3) Mandatory Social Security Code.

²⁷⁷Article 68 (4).

²⁷⁸In addition, the law limits labour contractual autonomy. A collective or individual labour contract may only regulate matters, which are not determined under imperative legal provisions (Articles 50 (1) and 66 (2) Labour Code). Further, a collective contract may only provide for better treatment of employees than laid down by the law, or any other collective contract binding an employer, while an individual contract may only provide for better treatment of an employee than provided for by the applicable collective contract (Articles 50 (2) and 66 (2) Labour Code).

²⁷⁹The Council of Ministers determines which category particular types of work belong in (Article 104 (1) Mandatory Social Security Code). Categories of labour based on the degree of harshness of work are relevant for calculating the number of years of service for social security purposes. Three years of service in first category labour equal four years of service in second category labour, which equal five years of service in third category labour (Article 104 (2) Mandatory Social Security Code). The Ordinance on Categorising Labour Upon Retirement exhaustively lists the types of work, which fall into first and second categories of labour, while all remaining types constitute the third category. First category includes specific jobs underground, in aviation, underwater, in nuclear power plants, and the like, while second category includes other specific jobs in those and other fields (Articles 1 and 2 Ordinance on Categorising Labour Upon Retirement).

²⁸⁰Article 168 (1.1) Mandatory Social Security Code.

²⁸¹Article 168 (1.2) Mandatory Social Security Code.

²⁸²Article 168 (2) Mandatory Social Security Code.

²⁸³Article 69 Mandatory Social Security Code.

²⁸⁴Article 329 Labour Code, which entitles employers to selection in cases of redundancy, permits dismissing employees whose positions are not made redundant in order to keep other employees only based on the latter's better qualifications and performance where preferring them over the former is in the interests of the work.

Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)?

There are no positive measures based on race/ethnicity, religion/belief, or sexual orientation. Positive action based on race/ethnicity, or religion/belief is declared unconstitutional. The Constitutional Court has held that any privilege or restriction on any of the grounds listed under the constitutional non-discrimination clause, including race/ethnicity, and religion/belief, breaches the Constitution.²⁸⁵ Positive action on other, constitutionally unmentioned grounds, including disability, age, and sexual orientation, has been declared constitutionally admissible by the Court.²⁸⁶ Positive measures on grounds of disability and age do exist.²⁸⁷

The Protection, Rehabilitation and Social Integration of Invalids Act grants financial incentives to **disabled** people's organisations and enterprises for disabled people conducting vocational training and retraining for disabled persons,²⁸⁸ and employers hiring long-term disabled persons.²⁸⁹ Specialised enterprises for long-term disabled persons, which are members of national disabled persons organisations are entitled to 30% reduction on mandatory social security payments.²⁹⁰ The government is required to adopt financial incentive programmes to promote disabled persons' entrepreneurship and employment.²⁹¹ Nationally representative disabled persons organisations are entitled to budgetary subsidies.²⁹² A special Rehabilitation and Social Integration Fund is set up to fund positive measures.²⁹³

Under the Labour Code, in certain cases,²⁹⁴ employers may only dismiss "reassigned" employees, or employees having certain illnesses appearing on an exhaustive list adopted by the minister of health care, upon prior authorisation by the executive authority overseeing the implementation of labour law.²⁹⁵ Any dismissal without such authorisation having been sought or granted, is subject to repeal by the court, without substantive review.²⁹⁶ Employers of more than 50 employees are required to annually appoint 4-10 % of jobs for "reassignment."²⁹⁷ Employers are authorised to discharge this duty by funding the requisite jobs within a specialised enterprise, or workshop.²⁹⁸ Employers of more than 300 employees are required to create specialised workshops, and executive authorities and municipal councils - specialised enterprises, for disabled persons.²⁹⁹ Putting aside their uncertain enforcement, these rules result in segregating disabled persons in separate facilities, amounting to direct discrimination.

285Constitutional Court Ruling N 14 of 10 November 1992.

286Ibid. The Court has termed constitutional special protection provisions for disabled persons "socially necessary and justified privileges admissible under the Constitution [...] aiming at eliminating existing inequalities for the purposes of achieving the stipulated equality." For more details on the Constitutional Court's interpretation of non-discrimination under the Constitution, see "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group.

287Measures described here exclude social advantages and social assistance aimed at protecting disabled or older or younger persons. In addition, only measures within the scope of Directive 2000/78 are described.

288Article 17 (3).

289Article 20 (1). For definition of a long-term disabled person, see above section on Definitions.

290Article 23 (1).

291Article 24.

292Article 53. The criteria for nationally representative organisations are determined by the Council of Ministers (Additional Provision § 1.10)

293Article 48.

294Including closing down a part of an enterprise, staff cuts, work volume reduction, lack of the necessary qualities in an employee, or failure of an employee to meet an alteration in job requirements (Article 333 (1) Labour Code).

295Article 333 (1.2) and (1.3). The existing list includes active tuberculosis, professional and mental illnesses, diabetes, cancer, etc. (Ordinance N 5 of 20.02.1987).

296Article 344 (3).

297Article 315 (1) Labour Code. The Minister of Labour determines the specific percentage for each branch of industry (Article 315 (2) Labour Code). For details on reassignment, see section on Reasonable Accommodation above.

298Article 20 (2) Protection, Rehabilitation, and Social Integration of Invalids Act. The Act defines specialised enterprises and workshops as ones "where the proportion of invalids of the total of employees is: 1) persons with various disabilities – at least 50 %; 2) blind and vision impaired persons – at least 20 %; 3) deaf and hearing impaired persons – at least 30 %" (Article 21 (1)). These numbers include, apart from disabled persons, also persons with caring responsibilities for disabled persons with lasting disabilities, and temporarily disabled persons (Article 21 (2)).

299Article 316 (1) Labour Code.

The Promotion of Employment Act encourages employers to hire disabled persons referred by the Employment Agency.³⁰⁰ Independent job seekers do not benefit. An employer of 50 or less employees who hires a long-term disabled person for 12 months is entitled to the funds to cover such person's pay and state social security payments on such person's behalf for up to 12 months.³⁰¹ An employer of more than 50 employees who, in excess of the quota required by the Labour Code, hires a long-term disabled person for 12 months is entitled to funds to cover such person's pay and state social security payments for up to 12 months.³⁰² An employer who hires a long-term disabled person for temporary, seasonal or hourly work is entitled to funds to cover such person's pay and state social security payments for up to 6 months.³⁰³ Employers who retain their long-term disabled employees for 9 months after the first 12 months are eligible for additional monies.³⁰⁴ Employers who retain their long-term disabled employees during suspension or reduction of activities longer than 15 workdays may apply for financial aid, including funds for state social security payments for up to 2 months.³⁰⁵ Employers who retain their long-term disabled employees for 12 additional months and provide them with vocational training are entitled to the cost of training.³⁰⁶ An employer who hires for 24 months a long-term disabled person is entitled to funds to cover such person's pay and state social security payments for up to 24 months.³⁰⁷ An employer who hires a young long-term disabled person is entitled to funds to cover such person's pay and state social security payments for up to 18 months, as well as to the cost of vocational training undergone by such person.³⁰⁸

The Public Procurement Act provides for preferences for specialised enterprises for disabled persons. Specialised enterprises are exclusively entitled to any public procurement order for goods and services appearing on a list adopted by the government under the Protection, Rehabilitation and Social Integration of Invalids Act.³⁰⁹ Such orders are awarded to specialised enterprises under exceptional negotiation procedures as opposed to public competition procedures.³¹⁰ Further, preferences are envisaged for specialised enterprises for disabled persons in competition award procedures where orders are awarded for goods or services not on the exclusive list. Specialised enterprises are required to provide financial guarantees in an amount of up to 1% of the award value, while other bidders are required to provide up to 10%.³¹¹ An offer by a specialised enterprise is deemed to be the lowest, and succeeds, where it exceeds the lowest price offered by another bidder by up to 10%.³¹² Entities awarding public procurement orders may, on their discretion, require an award winner to create jobs for disabled persons.³¹³

300Such measures are defined as "measures ensuring equal opportunities via socio-economic integration of labour market risk groups"(Title VIII Promotion of Employment Act). The Act defines "risk groups" as "[...] unemployed persons living in, or in danger of being reduced to, a state of social isolation or poverty" (§ 1.17, Additional Provision). Risk groups under Title VIII, apart from disabled persons, also include unemployed single mothers and unemployed mothers with caring responsibilities for children younger than 3 years (Article 53), unemployed persons younger than 28 years, permanently unemployed persons with primary or lower education (Article 54 (3)), and unemployed persons within 12 months of having served a prison term (Article 55 (1)).

301Article 52 (1) Promotion of Employment Act.

302Article 52 (2).

303Article 52 (3).

304Article 56 (2).

305Article 57 (1).

306Article 57 (2) and (3).

307Article 36 (2).

308Article 35.

309Articles 16 (1.7) and 52 (1.7) Public Procurement Act in conjunction with Article 22.1 Protection, Rehabilitation and Social Integration of Invalids Act. Article 22.1 Invalids Act requires the Council of Ministers to adopt a list of goods and services to be assigned for production to specialised enterprises for disabled persons. The existing list includes nightwear, bed linen, mats and pillows, work and other uniform clothing and shoes, furniture for administrative and public buildings, etc.

310Public procurement orders encompass, apart from public institutions' orders, also orders by private commercial entities granted exclusive or special entitlements, including concession and licensing, for activities exhaustively listed under the Act, including transportation, communications, and energy resources extraction (Article 4). Although the scope of this preference is substantial, its actual impact on disabled persons' employment will largely depend on the items included on the exclusive list, which will determine the volume of demand and thus, the value of orders awarded to specialised enterprises.

311Article 30 (3) Public Procurement Act in conjunction with Article 21 Protection, Rehabilitation and Social Integration of Invalids Act.

312Article 41 (3) Public Procurement Act in conjunction with Article 21 Protection, Rehabilitation and Social Integration of Invalids Act.

313Article 22 (2) Public Procurement Act.

The Higher Education Act entitles disabled persons to admission into universities, regardless of their competitive results, if they successfully pass the tests.³¹⁴ Tax legislation entitles disabled persons to preferences with respect to revenue taxation,³¹⁵ while specialised enterprises for disabled persons, which are members of national disabled persons organisations and employ a set percentage of disabled persons, are exempt from corporate tax and municipality tax.³¹⁶ Where disabled employees are fewer than required, corporate tax exemption is proportionate to the actual percentage.³¹⁷ The funds exempt must be spent for rehabilitation and social integration of disabled persons.³¹⁸

The Promotion of Employment Act encourages employers to hire “**young people**”³¹⁹ referred by the Employment Agency. Independent job seekers are excluded. An employer who hires a young person is entitled to funds covering such person's pay and state social security payments for up to 12 months, as well as to the cost of vocational training undergone by such person.³²⁰ An employer who hires full time a young person for 12 months is entitled to funds to cover such person's pay and state social security payments for up to 12 months.³²¹ An employer who provides vocational training and/or practical training to a young person is entitled to funding to cover such training.³²² Young persons are entitled to preferential access to employment programmes implemented by the Employment Agency under which employers are entitled to the cost of employing a person for up to 5 months.³²³

The Prevention of Discrimination Bill requires public authorities to take all possible and necessary measures to guarantee equal treatment and equal opportunities.³²⁴ Where necessary to further this goal, public authorities are under a duty to take special measures on all grounds covered by the Directives aimed at equalising opportunities for persons or groups in unequal positions, as long as such measures are necessary.³²⁵ Authorities have a duty to encourage and facilitate sufficiently representative participation by persons belonging to ethnic, religious, and language minorities in governance and decision-making.³²⁶ Employers have a duty, where necessary to guarantee equal treatment and equal opportunities, to encourage applications from prospective employees belonging to under-represented ethnic groups,³²⁷ and, where all other conditions are equal, to encourage career and participation for employees belonging to under-represented ethnic groups.³²⁸

The Protection Against Discrimination Bill provides for no positive measures.

Constitutional case law bans positive measures based on race/ethnicity and religion/belief, and allows positive measures based on age, disability and sexual orientation. There are in law positive measures on grounds of disability and age. There are no positive measures based on race, religion, or sexual orientation. The Prevention of Discrimination Bill authorises positive measures and requires authorities, employers and educational institutions to take such measures, including specific measures. The Protection Against Discrimination Bill does not for positive measures.

Is the government considering adopting such measures? Are there comparable specific measures in relation to sex discrimination?

314Article 68 (2). Disabled persons under the Act are further entitled to “special alleviations” provided for under universities’ internal regulations (Article 70 (2)). Although the exact content of such alleviations is unspecified under the law, these, as a rule, are not positive measures designed to compensate for discrimination and exclusion.

315Article 29 (3) and (4) Natural Persons’ Revenue Taxation Act.

316Article 59 Corporate Taxation Act.

317Ibid.

318Ibid.

319Implicitly defined as “unemployed persons of younger than 29 years (Title III in conjunction with Articles 34-36).

320Article 34 (1) and (2).

321Article 36 (1).

322Article 41.

323Article 54 (1), (3) and (4).

324Draft Article 16 in conjunction with draft Article 2.2 and 2.4.

325Draft Article 17 (1) in conjunction with draft Article 2.2 and 2.4, and 12 (3).

326Draft Article 51.

327Draft Article 33 (1) in conjunction with draft Article 2.2 and 2.4.

328Draft Article 33 (2).

No governmental plans for positive measures on any ground are known. No sex positive measures exist.³²⁹ The Prevention of Discrimination Bill requires public authorities, where necessary to guarantee equal treatment and equal opportunities, to take measures in education or training to ensure balanced participation by women and men as long as necessary.³³⁰ Authorities are under a duty to encourage and facilitate balanced participation by women and men in governance and decision-making.³³¹ An employer has a duty, where needed to guarantee equal treatment and equal opportunities, to encourage applications from prospective employees belonging to the under-represented sex, and, where all other conditions are equal, to encourage career and participation for employees belonging to the under-represented sex.³³² Central and local executive authorities are required, where all other conditions are equal, to appoint prospective employees belonging to the under-represented sex until such sex 40 % representation in a particular unit,³³³ also applicable to appointments to councils, expert working groups, managing, consultative and other bodies, except for elected bodies.³³⁴

What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?

No specific anti-discrimination remedy exists. Anti-discrimination guarantees are enforceable by general remedies, including international remedies,³³⁵ and domestic administrative and civil remedies.³³⁶

Administrative remedies include administrative review against public authorities' decisions, and administrative-penal procedures whereby administrative bodies impose administrative sanctions for breaches of the law, and compulsory measures to ensure compliance.

Any act by an administrative authority is subject to review by the higher-ranking authority, or the courts. Any legislation adopted by the executive is subject to review by the Supreme Administrative Court.³³⁷ Any individual or entity whose rights or legitimate interests are affected has standing to require review.³³⁸ Any party has standing to challenge secondary legislation. The superior body is competent to abolish, in whole or in part, any unlawful or inexpedient act,³³⁹ and decide the matter on the substance of the case.³⁴⁰ Where a refusal to issue an act is found unlawful or inexpedient, the superior body will compel its inferior to issue the requisite act.³⁴¹ The superior body's decision is subject to three-instance judicial review. The court is competent to abolish, in whole or in part, or amend any unlawful act.³⁴² Judicial review decisions are subject to two appeals, the last instance being the Supreme Administrative Court. Secondary legislation review is two-instance. The first-instance ruling is by a three-member panel of the Supreme Administrative Court, while the final ruling is given by a five-member panel of the same court.

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Laws governing particular fields charge administrative bodies to enforce them by imposing administrative penalties for breaches, including monetary fines, suspension of the right to exercise a

³²⁹This excludes social protection and social assistance measures for women, pregnant women, breast-feeders, and mothers with caring responsibilities, as well as positive measures for single mothers and mothers with caring responsibilities.

³³⁰Draft Article 17 (1) in conjunction with draft Article 2.2 and 2.4, and 12 (4).

³³¹Draft Article 51.

³³²Draft Article 33.

³³³Draft Article 52 (1).

³³⁴Draft Article 52 (2).

³³⁵International and regional enforcement mechanisms are not described.

³³⁶See also "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group, including criminal remedies.

³³⁷Certain acts are exempt from general review (Article 34 Administrative Procedure Act).

³³⁸Article 21 (1) Administrative Procedure Act.

³³⁹Article 30 Administrative Procedure Act.

³⁴⁰Article 30 (3) Administrative Procedure Act.

³⁴¹Article 30 (2) Administrative Procedure Act.

³⁴²Article 42 Administrative Procedure Act.

particular profession or activity, and public reprimand,³⁴³ and by compulsory measures.³⁴⁴ Enforcement bodies act ex officio, or upon initiation by any party. Breaches of non-discrimination guarantees stipulated under various statutes governing specific fields are liable to a fine, or suspension of the right to exercise a profession or activity imposed by the respective enforcement body upon signal by the victim or any other party.

In civil law, a victim may seek a determination of their right to non-discrimination, or redress for a violation of such right,³⁴⁵ and/or damages. A victim may seek to enforce their right to non-discrimination by asking the court to order a discriminator to take such action, or to abstain from such action, as required by respect for this right, including future continuous or repetitive action.³⁴⁶ Tort action may be used where discrimination has caused damage, against the party who caused it, or against a party who commissioned another to carry out a mandate, where damages were inflicted during, or in relation to, carrying out a mandate.³⁴⁷ All damage, pecuniary and non-pecuniary,³⁴⁸ directly resulting from an unlawful act, are subject to compensation. The onus on the claimant is to show the act was unlawful, and damage resulted, actual proof being required. The onus is then on the respondent to prove that s/he was not liable for the act, or the damage.

Under specific tort legislation, the state is liable for damages sustained by individuals as a result of unlawful acts or omissions on the part of the executive or judiciary. Redress may be sought before the courts only after the impugned act was abolished in administrative review proceedings.

Labour claims are available against discrimination in employment.³⁴⁹ Specific labour actions include non-discharge and nullity claims under collective labour contracts,³⁵⁰ nullity claims under individual labour contracts,³⁵¹ and actions against unfair dismissal.³⁵²

The Consumers Protection and Rules of Commerce Act provides for a judicial remedy against discriminatory advertising.³⁵³ Any interested party may file a claim against an advertiser and/or an advertising agency, seeking a court ban on a particular advertisement and/or compensation for damages.³⁵⁴ Upon receiving a claim, the court may suspend an advertisement, or prohibit its distribution.³⁵⁵ Where a ruling against an advertisement has entered into force, upon request by any interested party, the court may order the advertiser to publish such ruling, or a part of it, and correct the advertisement accordingly.³⁵⁶

Few of these remedies have been implemented against discrimination. There are but two judicial rulings, one against race discrimination, and one against sex discriminatory advertising. NGOs sponsored both cases. The first was rendered in a tort case which succeeded in June 2002.³⁵⁷ In a first instance ruling, the judge afforded redress to Romani individuals for being denied on explicit racist

343Article 13 Administrative Breaches and Sanctions Act.

344Under the Act, such measures do not aim at punishing a breach, but rather at preventing, or terminating one, or the negative consequences of one (Article 22). The particular types of compulsory measures and the cases where such measures are imposed vary across the laws (Article 23).

345Article 97 (1) Civil Procedure Code.

346Article 97 (2) Civil Procedure Code.

347Article 45 and 49 Contracts and Obligations Act.

348Case law defines non-pecuniary damages as "pain and suffering." Accordingly, no legal entity can be found to have suffered, or be awarded compensation for, such damages.

349The law defines a labour claim as one related to a "labour relationship's arising, existence, implementation, or termination" (Article 357 Labour Code). While the Labour Code, including its non-discrimination clause, is implicitly applicable to access to employment, labour actions as defined are not a remedy against refusal by an employer to contract a prospective employee. This follows from explicit jurisprudence to the effect that under the Labour Code neither the result from a job competition, nor the lawfulness of the competition procedure is subject to review by the courts because these are not labour claims within the meaning of Article 357 (Ruling N 469 of 27.04.1994 in civil case N 3799/93, and Ruling N 558 of 10.05.1993 in civil case N 305/93, among others). Under claims related to a labour relationship's, a claimant may only ask the court to find the fact of such a relationship's arising (ibid.), and not whether such (non) arising is lawful. Accordingly, labour claims are inapplicable where a prospective employee was not contracted on discriminatory grounds.

350Article 59 and 60 Labour Code.

351Articles 74 – 76, and 87 Labour Code.

352Article 344 (1) Labour Code.

353The Act defines unfair advertising as "containing elements of discrimination on grounds of sex, race, religion, nationality, political beliefs, age, physical or mental abilities, or which violates human dignity" (Article 34.1).

354Article 30.

355Article 31.

356Article 32.

357Ruling N 52 "k" of 30.06.2002 in civil case N 1794/2001, Kazanlak District Court.

grounds access to a public swimming pool in a village, putting into effect for the first time in national law the right to equality.³⁵⁸ The denial of access was found in breach of the Constitution, and the International Convention on the Elimination of All Forms of Racial Discrimination, and was held to violate human dignity and honour, contrary to the Constitution, and binding international law, including the Universal Declaration, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The treatment was found to have caused non-pecuniary damage consisting in adverse impact on the claimants' dignity, honour and reputation. In determining the amount of compensation due, the court considered as an aggravating circumstance the fact that inalienable human rights under the Constitution and binding international law were violated, that the violation was committed at a public place, and that the respondent had acted with intent. The ruling is noteworthy for directly applying constitutional and binding international law, and for finding discrimination had caused damages by the very fact that it constituted an impingement upon human dignity. In April 2003 a court in Sofia ruled against sex discriminatory advertisement, awarding damages to female claimants. The court directly applied international law definitions of discrimination under ILO Convention N 111 and the Convention for the Elimination of All Forms of Discrimination against Women, as well as domestic prohibitions of discrimination, including under the Constitution, the Radio and Television Act and the Consumers Protection Act.

The Prevention of Discrimination Bill offers specific anti-discrimination remedies, both judicial and before the Protection against Discrimination Commission, a specialised independent body for the promotion and protection of equal treatment. A victim of discrimination has standing to have recourse to either remedy even after a relationship in which discrimination allegedly occurred has ended.³⁵⁹ Any individual or entity, or non-incorporated association of individuals has victim status.³⁶⁰ A claim can be directed against any individual or legal entity, either public or private, who committed an act of discrimination, or a party who intentionally aided an act of discrimination,³⁶¹ or an employer who failed to take effective measures to prevent discrimination at work - for any act of discrimination committed at work by an employee,³⁶² or a manager of an educational or training institution who failed to take effective measures to prevent discrimination at the study place – for any act of discrimination committed by a member of the teaching or administrative staff, or by a student.³⁶³ Proceedings before both the anti-discrimination Commission and the courts are exempt from state fees.³⁶⁴

The Commission may be seized by a victim's complaint, or at the signal by any party, or *ex officio*.³⁶⁵ Following investigation and hearings, upon finding of discrimination, the Commission imposes an administrative penalty and/or administrative compulsory measures, including stay of employers' decisions, and binding instructions.³⁶⁶ Parties who fail to comply with a binding instruction are subject to suspension of their activities by the Commission.³⁶⁷ The Commission has power to impose financial sanctions whose amounts vary, for individuals, between 100 BGN and 25 000 BGN, and for legal entities, between 500 BGN and 150 000 BGN.³⁶⁸ The procedure before the Commission provides for optional conciliation. A conciliation agreement approved by the Commission is binding and subject to forced execution, and *ex lege* includes a duty on the discriminator to take effective measures to prevent future discrimination.³⁶⁹

358The judge held, "The principle of equality means [...] equal dignity, and unequal treatment constitutes unlawful conduct called discrimination" (ibid.).

359Draft Article 3 (3).

360Draft Article 3 (1) and (2).

361Draft Article 15.

362Draft Article 28 in conjunction with draft Article 27.

363Draft Article 42 in conjunction with draft Article 41 (1).

364Draft Articles 69 and 101 (1).

365Draft Article 66.

366Draft Articles 90 (1) and 103 (1.1).

367Draft Article 103.

368Draft Articles 105 – 114. 1 BGN equals ca. EURO 2.

369Draft Articles 72 (1) and (3), and 73 (2).

Victims may bring a special court action to enforce any right guaranteed under non-discrimination law,³⁷⁰ seeking a judicial finding of a breach of non-discrimination law, a judicial order of appropriate measures to terminate such breach, *restitutio in integrum*, and pecuniary and non-pecuniary damages.³⁷¹ Importantly, where non-discrimination rights of numerous parties are affected, public interest NGOs have standing to seek a judicial order of appropriate measures to terminate the breach, and *restitutio in integrum*.³⁷² Individual claimants and public interest NGOs seeking collective protection may make public their claim, whereupon any other party affected by the alleged breach may join in the proceedings.³⁷³ Any public interest NGO may join in collective protection proceedings initiated by another.³⁷⁴ The Commission has *amicus curiae* standing.³⁷⁵

Employers and managers of educational or training institutions are required to immediately investigate any complaint of harassment at the work or study place, by a member of staff, a professor, or by a student, and to take measures to terminate any harassment, and enforce disciplinary liability.³⁷⁶ Employers and managers of educational or training institutions are required to provide any employee or student alleging discrimination with the relevant information, including the grounds for any decision affecting the latter.³⁷⁷

The Protection Against Discrimination Bill, the reduced Parliamentary version of the Prevention of Discrimination Bill, weakens its provisions on remedies. Employers' and educational institutions' liability for third party discrimination at the work/study place is excluded. The anti-discrimination Commission's specialised subcommittees, for race, sex, and other discrimination, are substituted for optional specialised panels, which the Commission's chair may, at discretion, appoint. Such panels, as opposed to the subcommittees, have no separate reporting duties within the Commission's annual report. Victims have no standing to seek damages in judicial anti-discrimination proceedings – instead, after such proceedings are concluded, victims need to bring separate actions for damages, and undergo other sets of proceedings to receive compensation. Individuals and NGOs may not bring collective judicial actions to defend equality rights. NGOs are denied standing to bring judicial anti-discrimination actions on their own behalf, unless multiple discrimination is alleged. On the more positive side, the Protection Against Discrimination Bill gives the Commission standing to take court action on its own behalf.

There is no effective remedy in existing law to enforce non-discrimination. There is no special remedy and general ones are inadequate. Pending draft law envisages effective special remedies, before a specialised body and the courts. The action needed for this nation is for Parliament to enact the Prevention of Discrimination Bill as proposed by government, incorporating also the Commission's power envisaged under the Protection Against Discrimination Bill to take court action.

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?

As a general rule, national law gives no standing to legal entities to represent individuals, even where entities have a legitimate interest in rights protection.^{378,379} National rules on procedural standing in

370Draft Article 97 (1).

371Draft Article 98.

372Draft Article 99 (1).

373Draft Article 100.

374Draft Article 99 (2).

375Draft Article 102.

376Draft Articles 26 and 40.

377Draft Articles 32 and 44.

378An exception, trade unions and their divisions are entitled to represent employees who so request in judicial proceedings for the determination of labour rights (Article 45 Labour Code in conjunction with Article 20 Civil Procedures Code).

379For more details, see "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group.

both judicial and administrative proceedings are restrictive, excluding any party whose rights or legitimate interests are not immediately affected.³⁸⁰

The Prevention of Discrimination Bill entitles trade unions and NGOs to represent victims in judicial anti-discrimination proceedings.³⁸¹ The Protection Against Discrimination Bill entitles NGOs to *amicus curiae* standing in any anti-discrimination proceedings.

Entities have no standing in existing law to engage in proceedings on behalf, or in support of complainants. Pending anti-discrimination bills envisage such standing.

What is the situation concerning time limits?

In the absence of specific anti-discrimination remedies, there are no uniform anti-discrimination time limits. Time limits on general remedies vary according to the type of proceedings and the specific field involved.

Review of an administrative act may be sought before the superior body within 7 days of notification of such act.³⁸² A tacit refusal may be challenged within 14 days of expiry of the time limit for acting.³⁸³ An administrative act may be challenged before the courts within 14 days of notification of the superior body's decision, and a tacit refusal, within 14 days of expiry of the time limit for the superior body to rule.³⁸⁴ The time limit to directly challenge an administrative act before the court is 14 days of notification of such act, or, in cases of tacit refusal, 14 days of expiry of the time limit for acting.³⁸⁵ There is no time limit for asking the court to declare an act null and void.³⁸⁶

The time limit for an authority to institute administrative enforcement proceedings is three months of identifying a perpetrator, or a year of commission of an offence.³⁸⁷ The time limit for imposing a sanction is six months of finding a breach.³⁸⁸ The time limit for enforcing a sanction is two months for a fine, six months for temporary suspension of the right to exercise a profession or activity, and three months for public censure.³⁸⁹

The general time limit on bringing a civil action is five years of the date a claim was due.³⁹⁰ In tort cases, this period starts to run from identifying a perpetrator. Special laws may provide for shorter or longer periods. Labour claims are generally prescribed in three years, while claims arising out of termination of labour relationships, in two months.³⁹¹

Under the Prevention of Discrimination Bill, the time limit for bringing proceedings before the Protection against Discrimination Commission and before the court is 5 years.³⁹² The Protection Against Discrimination Bill envisages a time limit of 3 years.

Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)?

³⁸⁰Exceptionally, under the Consumers Protection Act, standing is granted to consumers' associations to bring consumer interest actions, seeking a court order of termination of violations of legislation safeguarding consumers' interests, and/or compensation for damages on a collective consumer interest (Articles 51 – 54).

³⁸¹Draft Article 97 (2).

³⁸²Article 22 (1) in conjunction with Article 17 Administrative Procedure Act.

³⁸³Article 22 (2) Administrative Procedure Act.

³⁸⁴Article 37 (1) Administrative Procedure Act.

³⁸⁵Ibid.

³⁸⁶Article 37 (2) Administrative Procedure Act.

³⁸⁷Article 34 (1) Administrative Breaches and Sanctions Act.

³⁸⁸Article 34 (3) Administrative Breaches and Sanctions Act.

³⁸⁹Article 82 (1) Administrative Breaches and Sanctions Act.

³⁹⁰Article 110 in conjunction with Article 114 Contracts and Obligations Act.

³⁹¹Article 358 (1.1) and (1.2) Labour Code.

³⁹²Draft Article 68 (1).

Existing law does not provide for a shift or easing of the onus of proof in discrimination cases.³⁹³ The shift of the burden of proof exists in other fields, where legal presumptions are employed as procedural tools to redress substantive inequalities in bargaining positions, and/or to provide additional protection to selected parties based on fairness and public interest considerations.³⁹⁴

Under both pending anti-discrimination bills, in compliance with the Directives, in both administrative and judicial anti-discrimination proceedings the burden of proof shifts once a claimant establishes facts from which it may be inferred that discrimination occurred.³⁹⁵

Existing law envisages no shift of the burden of proof, but pending law does.

Are there comparable provisions in national law in relation to sex discrimination?

There is no shift of the burden of proof in sex, or any other discrimination cases.

Under both pending bills, the shift of the burden of proof is applicable to sex, as well as to any other discrimination proceedings.

Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?

Existing law does not protect against victimisation within the meaning of the Directives.³⁹⁶

Both pending anti-discrimination bills ban victimisation as a form of discrimination.³⁹⁷ Victimisation is defined as more unfavourable treatment of a person who has taken, or is presumed to have taken or who plans to take in the future, any action for protection against discrimination, including filing a complaint, signal, or claim, or testifying in anti-discrimination proceedings,³⁹⁸ as well as unfavourable treatment of any person related to a person who has taken, or is presumed to have taken or to plan to take in the future, such action, or of any person who has refused to discriminate where incited to discriminate.³⁹⁹

Existing law does not protect against victimisation, but pending law does.

What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas?

No specific anti-discrimination sanctions exist. Non-discrimination clauses are dispersed under various statutes, the general sanctions provided thereunder apply to discrimination. These include monetary fines, or temporary suspension of the right to carry out a profession or activity, enforceable by administrative bodies. In terms of harshness, sanctions vary across the different areas. Existing sanctions are ineffective because they are not enforced in discrimination cases. General enforcement bodies lack any anti-discrimination expertise and avoid implementing non-discrimination clauses, reducing them to mere statements.⁴⁰⁰

³⁹³Indeed, under the Labour Code, with potential implications for anti-discrimination burden of proof shift, good faith is presumed in the exercise of labour rights and duties (Article 8 (2)).

³⁹⁴For further details on existing legal presumptions, see "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group.

³⁹⁵Draft Article 14 Prevention of Discrimination Bill.

³⁹⁶Protection against victimisation exists in other contexts. The Healthy and Safe Working Conditions Act prohibits employers from treating an employee unfavourably as a consequence of a legitimate refusal to work (Article 22 (3)). Further under the Act, employees' representatives are protected from being treated unfavourably because of having acted to help ensure healthy and safe working conditions (Article 30 (4)).

³⁹⁷Draft Article 4 (2) Prevention of Discrimination Bill. Draft

³⁹⁸Draft Article 9 (1) and (2).

³⁹⁹Draft Article 9 (3) and (4).

⁴⁰⁰See also "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination

Under the Prevention of Discrimination Bill, anti-discrimination financial sanctions enforceable by the Protection against Discrimination Commission are substantial, averaging 5 000 - 10 000 BGN. The Protection Against Discrimination Bill envisages smaller, but still preventative amounts

Existing law provides for no effective sanctions. Draft law provides for preventative sanctions.

Is multiple discrimination an aggravating circumstance?

Under existing or draft law, multiple discrimination is not an aggravating circumstance. Under the Prevention of Discrimination Bill, public authorities are under a duty to give priority to positive measures benefiting victims of multiple discrimination.⁴⁰¹ Under the Protection Against Discrimination Bill, in cases of multiple discrimination, NGOs are entitled to bring a court action on their own behalf.

What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

No such action has been taken.⁴⁰²

Under the Prevention of Discrimination Bill, the Protection against Discrimination Commission publicises its activities and equality by trainings, keeping a public register of its decisions and binding instructions, periodical reports on the state of equal treatment, and a bulletin, and advising any person concerning individual rights, obligations and remedies under non-discrimination law.⁴⁰³ The chairperson of the Commission, and the chairs of its sub-commissions inform the public of the Commission's activities via the media.⁴⁰⁴ Under the Protection Against Discrimination Bill, these functions are eliminated.

What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions?

No targeted action has been taken to ensure that officials do not discriminate. The non-enforceable Civil Servant Code of Conduct declares that officials discharge their duties impartially and without prejudice, creating conditions for equality of cases and parties.⁴⁰⁵ Optional training on the Prevention of Discrimination Bill has reportedly been made available to officials by the Public Administration Institute, with no focus on teaching officials to abstain from discrimination. The National Council for Ethnic and Demographic Issues, in conjunction with NGOs, has held trainings on the Prevention of Discrimination Bill for judges, police and prosecutors, with no focus on teaching those officials not to discriminate.

Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

While a policy of social dialogue and a number of social dialogue frameworks in specific areas are in place,⁴⁰⁶ there has been no social dialogue on equal treatment.

legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group.

401Draft Article 17 (2).

402Excluding official promulgation of anti-discrimination provisions, which is an imperative matter of course for all legislation, and limited training on the Prevention of Discrimination Bill for lawyers and journalists held by the National Council for Ethnic and Demographic Issues in conjunction with NGOs.

403Draft Article 62 (1.5), (1.9), (1.10), (1.11), (1.12), (1.16).

404Draft Article 64 (1.6) and 65.3.

405Article 1.1 Civil Servant Code of Conduct. As a matter of course, officials are bound by existing prohibitions of discrimination on a par with any other party.

406The Labour Code expressly aims at ensuring social dialogue in labour governance (Article 1 (3)). The state governs labour, social security and living standard issues after consultation

Under the Prevention of Discrimination Bill, employers are to act in cooperation with trade unions to prevent discrimination at work.⁴⁰⁷ There is no such provision under the Protection Against Discrimination Bill.

Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

No policy is in place on dialogue with NGOs on anti-discrimination. Certain frameworks for governmental-NGO dialogue do exist but none on equal treatment.⁴⁰⁸ Dialogue with NGOs on anti-discrimination has been limited to the drafting of the Prevention of Discrimination Bill within the framework of the National Council on Ethnic and Demographic Issues. The process was participatory, resulting in meaningful input by civil society in the Bill. However, there was no dialogue with civil society in the subsequent drafting of the parliamentary Protection Against Discrimination Bill, which significantly reduced the provision of protection. Under the Prevention of Discrimination Bill, the Protection against Discrimination Commission has a mandate to cooperate with NGOs.⁴⁰⁹ The Commission has no such mandate under the Protection Against Discrimination Bill.

Does such a body exist on the national level? Are existing bodies addressing the issue of multiple discrimination? Where a body does not exist on the national level, are there plans to establish such a body? What are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?

No body within the meaning of Article 13 exists. Existing bodies, including the Parliamentary Commission on Human Rights, the National Council on Ethnic and Demographic Issues, the

and in dialogue with the social partners, consultation being imperative prior to adoption of any legislation (Articles 2 and 3). A National Council for Tripartite Cooperation composed of representatives of government, trade unions and employers (Article 3a), and similar tripartite cooperation councils at industry, branch and municipality level (Article 3b Labour Code) review and comment on draft legislation and administrative acts (Article 3c (1) and (3)). Public authorities are bound to discuss tripartite councils' opinions prior to making any decision affecting labour (Article 3d (5) Labour Code).

Under the Promotion of Employment Act, employment policy is implemented in cooperation and following consultation with the social partners (Article 3). A National Council on Promotion of Employment composed of representatives of government, trade unions and employers comments on, and proposes, draft legislation and policy to government (Article 8). A Cooperation Council composed of representatives of government, trade unions and employers oversees the implementation of employment policy (Article 12 (1) and (2)). Employment Commissions within regional development councils composed of government, trade unions, employers, and industry and branch representatives help implement employment and vocational training policy at regional level (Article 9). A council composed of representatives of trade unions and employers assists the executive director to the Employment Agency (Article 7 (4)). The National Consultative Council on the Labour Force's Professional Qualification composed of government, trade unions and employers within the Ministry of Labour coordinates national vocational training policies, and cooperation between trade unions and employers (Article 59 Promotion of Employment Act).

The National Council on Rehabilitation and Social Integration composed of government, disabled people's organisations and employers comments on draft legislation on disability (Article 3 Protection, Rehabilitation and Social Integration of Invalids Act).

Under the Economic and Social Council Act, a national consultative Economic and Social Council composed of employers, trade unions, the professions and certain trades, and consumers', environmental, feminist and disabled persons' organisations implements governmental – civil society dialogue on economic and social policy, commenting on draft legislation and policy (Articles 1 (1), 2.2, 4.1, 4.3, and 7 (3), (4) and (5)).

Under the Healthy and Safe Working Conditions Act, working conditions policy is formed and implemented following tripartite social coordination at national, industry and regional level within consultative structures composed of government and national trade unions and employers (Articles 38-39).

407Draft Article 27.

408The governmental National Council on Ethnic and Demographic Issues composed of government and ethnic NGOs is charged with coordinating government – NGO cooperation in formulating and implementing national ethnic, migration and demographic policies. The Council's activities are focused on preserving ethnic tolerance and minority protection. For more details, see "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group.

The National Council on Rehabilitation and Social Integration, composed of government, employers and disabled persons' organisations, is charged with consultative functions regarding disabled people's rehabilitation and social integration (Article 2 (2) Protection, Rehabilitation and Social Integration of Invalids Act).

The Economic and Social Council under the Economic and Social Council Act includes NGO representatives. Under the Promotion of Employment Act providing for various forms of dialogue with the social partners, "social partners" is defined to include, apart from trade unions and employers' organisations, also other NGOs (§ 1.12 Additional Provision). Under the Act, the National Council on Promotion of Employment and the Cooperation Council may decide to involve NGOs in their respective work (Articles 8 (3) and 12 (3)). Further, Employment Commissions within district regional development councils under the Act involve regional NGOs active in employment and vocational training (Article 9 (5.6)). The National Consultative Council on the Labour Force's Professional Qualification under the Act also involves NGOs (Article 59 (1)).

409Draft Article 55 (2).

Ombudsman, and an ombudsperson-like institution at local level in Sofia city, have no specific anti-discrimination mandate, or requisite powers.⁴¹⁰ No body has addressed multiple discrimination.

The Prevention of Discrimination Bill provides for a strong specialised independent body to promote and protect equal treatment. The Protection against Discrimination Commission is charged with enforcing non-discrimination law, and promoting equality of opportunity on all grounds covered by the Directives.⁴¹¹ The Commission is a 15-member collegiate body, jointly appointed by Parliament (9 members) and the President (6 members), in accordance with ensuring balanced participation by women and men, and participation by persons belonging to ethnic minorities.⁴¹² The Commission appoints from among its members a race/ethnic equality sub-commission, a sex equality sub-commission, and a sub-commission for all other grounds.⁴¹³ The Commission is funded from the budget through government,⁴¹⁴ and is serviced by a staff the numbers of which is to be fixed under its self-adopted regulations.⁴¹⁵ The Commission has meaningful powers to investigate allegations of discrimination,⁴¹⁶ mediate between parties for purposes of conciliation,⁴¹⁷ find breaches of anti-discrimination law and impose sanctions,⁴¹⁸ give binding instructions and impose compulsory measures,⁴¹⁹ make proposals to authorities to abolish their discriminatory acts or practices⁴²⁰ and to adopt positive measures,⁴²¹ challenge discriminatory administrative acts in court,⁴²² advise any party on non-discrimination law,⁴²³ assess draft legislation, make recommendations for adoption, amendment, or repeal of legislation,⁴²⁴ organise research,⁴²⁵ issue non-discrimination codes of practice in specific fields,⁴²⁶ publicise equal treatment and monitor its state,⁴²⁷ and collect and process relevant data.⁴²⁸ Where there is risk that a piece of evidence will be lost or its gathering obstructed, the Commission may order it to be gathered prior to initiating proceedings.⁴²⁹ All individuals, entities, and authorities are under a duty to assist the exercise of its powers by providing any information it requires, and access to any site.⁴³⁰ A refusal to provide information or access incurs liability.⁴³¹ The Commission has powers to oversee compliance with its binding instructions.⁴³²

Under the Protection Against Discrimination Bill, the Commission has no power to organise research, education and training; to issue codes of good practice; to promote its activities and equal treatment; to recommend to authorities to undertake specific positive measures; to monitor the state of equality and periodically report on it; to collect or process data. It has no duties to consult individuals and entities

410For details on these bodies' competences, see "Legal analysis of national and European anti-discrimination legislation: A comparison of the EU Racial Equality Directive and Protocol N 12 with anti-discrimination legislation in Bulgaria", September 2001, European Roma Rights Center, Interights, Migration Policy Group. The Ombudsman is a new institution envisaged by the Ombudsman Act of 23 May 2003 to enter into force 1 January 2004. The Parliament-elected Ombudsman reviews complaints from individuals whose rights and freedoms have been affected by state and municipal bodies, and by providers of public services, including education, healthcare, municipal services, social welfare, heating and power, postal and telecommunications, commerce, traffic control and all similar. The Ombudsman has only the powers to conduct checks, and to make recommendations for rights to be redressed, as well as to mediate between bodies and individuals. He has no anti-discrimination mandate.

411Draft Article 54.

412Draft Article 56.

413Draft Article 63 (1).

414Draft Article 54 (3).

415Draft Article 61.

416Draft Article 62 (2.1).

417Draft Article 62 (1.14).

418Draft Article 62 (1.1).

419Draft Article 62 (1.2). See also section on Remedies for those provided for by the Prevention of Discrimination Bill.

420Draft Article 62 (1.3).

421Draft Article 62 (1.13).

422Draft Article 62 (1.4).

423Draft Article 62 (1.5).

424Draft Article 62 (1.6).

425Draft Article 62 (1.7).

426Draft Article 62 (1.8).

427Draft Article 62 (1.10), (1.11), (1.12).

428Draft Article 62 (2.3).

429Draft Article 71.

430Draft Article 76 (1).

431Draft Article 78.

432Draft Article 93.

on their rights, duties and remedies under equality law, or to cooperate with NGOs. However, positively, it has standing to bring judicial non-discrimination action on its own behalf.

There is no existing body within the meaning of Article 13 but draft law envisages such a body.

Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

There is no special mechanism to abolish discriminatory legislation or administrative acts. General remedies are available.

Primary law (enacted by Parliament), which contradicts the Constitution or binding international law, will not be implemented on declaration by the Constitutional Court.⁴³³ No private party has standing to petition the Constitutional Court to rule.⁴³⁴ Where the Supreme Court of Cassation, or the Supreme Administrative Court, in a case before it, finds a law to be unconstitutional, it suspends the proceedings and refers the matter to the Constitutional Court.⁴³⁵ When a trial or appellate court, in a case before it, finds a law to be unconstitutional, it makes an appeal to the Supreme Court of Cassation or the Supreme Administrative Court, respectively. If the latter files the matter with the Constitutional Court, and it finds it admissible, the lower court suspends the proceedings before it, to resume them upon ruling by the Constitutional Court. For a private party to have a discriminatory law declared unconstitutional, a possibility is to bring a specific matter under the impugned law before the courts, and convince them that the law is unconstitutional. If a first, or a second-instance court respects this argument, it will refer the matter to the Supreme Court of Cassation or the Supreme Administrative Court, respectively which will then, at the discretion of its general meeting, refer it to the Constitutional Court. If lower instance courts disregard an unconstitutionality argument, it is open to a complainant to use appeals to ultimately bring the matter to the supreme courts, and try and persuade them there are grounds for them to seise the Constitutional Court.

Due to the direct applicability of the Constitution and binding international law, any court, in a matter before it, is competent to apply them in precedence over a discriminatory law.⁴³⁶ The Constitution expressly provides that laws enacted prior to its adoption which contradict it, are subject to no implementation.⁴³⁷ Any court, in a matter before it, is competent to find a law predating the Constitution unconstitutional, and disregard it.⁴³⁸ This implicitly applies to laws enacted following the Constitution's adoption. In practice, judges are reluctant to directly apply broadly formulated constitutional, or binding international norms, where that would mean ignoring a specific post-Constitution law.

Secondary legislation (adopted by national or local government) contradicting primary legislation is illegal and subject to repeal by the Supreme Administrative Court upon motion by any party.⁴³⁹ In a specific matter before them, judges are bound to apply a primary norm in precedence over a contradicting secondary rule. In practice, judges are reluctant to disregard specific secondary provisions in order to apply broader statutory rules. Any administrative act (a decision by an authority affecting a private party) contradicting any legislation is illegal and subject to amendment or repeal by the superior body, or the court upon motion by an affected party.⁴⁴⁰

⁴³³Articles 5 (1) and 149 (2) and (4) Constitution in conjunction with Article 22 (2) Constitutional Court Act.

⁴³⁴Those who have include one fifth of the Members of Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor General (Article 150 (1) Constitution).

⁴³⁵Article 150 (2) Constitution.

⁴³⁶In any case of collision of rules, the court is bound to apply the higher-ranking provision, and the Constitution is supreme law, followed in rank by binding international law.

⁴³⁷§ 3 Transitional and Final Provisions, Constitution.

⁴³⁸Constitutional Court Decision N 10 of 6.10.1994 in constitutional case N 4 of 1994.

⁴³⁹Articles 5, 27, and 29 Supreme Administrative Court Act. The requisite compatibility includes substantive and procedural lawfulness, form requirements, competence of the issuing body, and compatibility with the aim of the law (Article 12 Supreme Administrative Court Act).

⁴⁴⁰Articles 30 and 42 Administrative Procedure Act. See above, Administrative Review Proceedings under Remedies. The review encompasses substantive and procedural lawfulness, form requirements, competence of the issuing body, and compatibility with the aim of the law (Article 41 (3) Administrative Procedure Act).

Under the Prevention of Discrimination Bill, the Protection against Discrimination Commission has the power to propose to authorities to repeal discriminatory acts of theirs, and to recommend that legislation be amended, or abolished.⁴⁴¹ The Protection against Discrimination Bill too envisages such a power.

There is no mechanism in existing law to abolish discriminatory rules, apart from general procedures. Pending law envisages such a mechanism.

Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

No special mechanism exists to abolish discriminatory labour contracts or professional bylaws. General remedies are available.

Any contract, including a labour contract, collective or individual, or a clause thereof, which contradicts or circumvents the law, or good morals, including any discriminatory clause, may be declared null and void by the court upon motion by a party to such contract.⁴⁴² Labour contracts may be declared null and void also upon motion by a competent authority, or, in the case of collective contracts, by any employee to whom such contract applies.⁴⁴³ Individual labour contracts, or clauses thereof, which contradict, or circumvent, an applicable collective contract may be declared null and void by the courts upon motion by any party to a contract, or by a competent authority.⁴⁴⁴ Where a separate individual labour contract clause is declared null and void, it is *ex lege* replaced by imperative legal provisions, or the applicable collective contract.⁴⁴⁵

Trade union and employers' organisations' bylaws must be in accordance with the law.⁴⁴⁶ Where bylaws contradict the law, they are subject to repeal on general contractual nullity grounds.

There is no specific mechanism to abolish discriminatory contracts. General remedies are in place.

⁴⁴¹Draft Article 62 (1.3) and (1.6).

⁴⁴²Article 26 (1) Contracts and Obligations Act. Articles 62 Labour Code.

⁴⁴³ Article 74 (1) and (3) Labour Code. Collective labour contracts may not provide for less favourable of employees than the law, or any other collective contract binding the employer (Article 50 (2) Labour Code).

⁴⁴⁴Article 74 (1) and (3) Labour Code. A contract will not be declared null and void if its fault is removed, and an employer may not challenge a contract whose fault is removable (Article 60 Labour Code).

⁴⁴⁵Article 74 (4) Labour Code.

⁴⁴⁶Article 33 Labour Code.